

CS for SB 1717

THE STATE SENATE  
Monday, February 27, 2006

Committee Substitute for  
Senate Bill No. 1717

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1717 - By: FISHER of the Senate and PETERSON (Ron) of the House.

[ revenue and taxation- amending title 68 -cigarette and tobacco products - effective date ]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as last amended by Section 1, Chapter 375, O.S.L. 2005 (68 O.S. Supp. 2005, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Oklahoma Tax Commission concerning the administration of the Uniform Tax Procedure Code or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from the records or files or from any examination or inspection of the premises or property of any person.

B. Except as provided in paragraph 26 of subsection C of this section, neither the Tax Commission nor any employee engaged in the

1 administration of the Tax Commission or charged with the custody of  
2 any such records or files shall be required by any court of this  
3 state to produce any of the records or files for the inspection of  
4 any person or for use in any action or proceeding, except when the  
5 records or files or the facts shown thereby are directly involved in  
6 an action or proceeding pursuant to the provisions of the Uniform  
7 Tax Procedure Code or of the state tax law, or when the  
8 determination of the action or proceeding will affect the validity  
9 or the amount of the claim of the state pursuant to any state tax  
10 law, or when the information contained in the records or files  
11 constitutes evidence of violation of the provisions of the Uniform  
12 Tax Procedure Code or of any state tax law.

13 C. The provisions of this section shall not prevent the Tax  
14 Commission from disclosing the following information and no  
15 liability whatsoever, civil or criminal, shall attach to any member  
16 of the Tax Commission or any employee thereof for any error or  
17 omission in the disclosure of such information:

18 1. The delivery to a taxpayer or a duly authorized  
19 representative of the taxpayer of a copy of any report or any other  
20 paper filed by the taxpayer pursuant to the provisions of the  
21 Uniform Tax Procedure Code or of any state tax law;

22 2. The exchange of information that is not protected by the  
23 federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,

1 pursuant to reciprocal agreements entered into by the Tax Commission  
2 and other state agencies or agencies of the federal government;

3 3. The publication of statistics so classified as to prevent  
4 the identification of a particular report and the items thereof;

5 4. The examination of records and files by the State Auditor  
6 and Inspector or the duly authorized agents of the State Auditor and  
7 Inspector;

8 5. The disclosing of information or evidence to the Oklahoma  
9 State Bureau of Investigation, Attorney General, Oklahoma State  
10 Bureau of Narcotics and Dangerous Drugs Control, any district  
11 attorney, or agent of any federal law enforcement agency when the  
12 information or evidence is to be used by such officials to  
13 investigate or prosecute violations of the criminal provisions of  
14 the Uniform Tax Procedure Code or of any state tax law or of any  
15 federal crime committed against this state. Any information  
16 disclosed to the Oklahoma State Bureau of Investigation, Attorney  
17 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs  
18 Control, any district attorney, or agent of any federal law  
19 enforcement agency shall be kept confidential by such person and not  
20 be disclosed except when presented to a court in a prosecution for  
21 violation of the tax laws of this state or except as specifically  
22 authorized by law, and a violation by the Oklahoma State Bureau of  
23 Investigation, Attorney General, Oklahoma State Bureau of Narcotics

1 and Dangerous Drugs Control, district attorney, or agent of any  
2 federal law enforcement agency by otherwise releasing the  
3 information shall be a felony;

4 6. The use by any division of the Tax Commission of any  
5 information or evidence in the possession of or contained in any  
6 report or return filed with any other division of the Tax  
7 Commission;

8 7. The furnishing, at the discretion of the Tax Commission, of  
9 any information disclosed by its records or files to any official  
10 person or body of this state, any other state, the United States, or  
11 foreign country who is concerned with the administration or  
12 assessment of any similar tax in this state, any other state or the  
13 United States. The provisions of this paragraph shall include the  
14 furnishing of information by the Tax Commission to a county assessor  
15 to determine the amount of gross household income pursuant to the  
16 provisions of Section 8C of Article X of the Oklahoma Constitution  
17 or Section 2890 of this title. The Tax Commission shall promulgate  
18 rules to give guidance to the county assessors regarding the type of  
19 information which may be used by the county assessors in determining  
20 the amount of gross household income pursuant to Section 8C of  
21 Article X of the Oklahoma Constitution or Section 2890 of this  
22 title. The provisions of this paragraph shall also include the

1 furnishing of information to the State Treasurer for the purpose of  
2 administration of the Uniform Unclaimed Property Act;

3 8. The furnishing of information to other state agencies for  
4 the limited purpose of aiding in the collection of debts owed by  
5 individuals to such requesting agencies;

6 9. The furnishing of information requested by any member of the  
7 general public and stated in the sworn lists or schedules of taxable  
8 property of public service corporations organized, existing, or  
9 doing business in this state which are submitted to and certified by  
10 the State Board of Equalization pursuant to the provisions of  
11 Section 2858 of this title and Section 21 of Article X of the  
12 Oklahoma Constitution, provided such information would be a public  
13 record if filed pursuant to Sections 2838 and 2839 of this title on  
14 behalf of a corporation other than a public service corporation;

15 10. The furnishing of information requested by any member of  
16 the general public and stated in the findings of the Tax Commission  
17 as to the adjustment and equalization of the valuation of real and  
18 personal property of the counties of the state, which are submitted  
19 to and certified by the State Board of Equalization pursuant to the  
20 provisions of Section 2865 of this title and Section 21 of Article X  
21 of the Oklahoma Constitution;

22 11. The furnishing of information to an Oklahoma wholesaler of  
23 low-point beer, licensed under the provisions of Section 163.1 et

1 seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers  
2 authorized by law to purchase low-point beer in this state or the  
3 furnishing of information to a licensed Oklahoma wholesaler of  
4 shipments by licensed manufacturers into this state;

5 12. The furnishing of information as to the issuance or  
6 revocation of any tax permit, license or exemption by the Tax  
7 Commission as provided for by law. Such information shall be  
8 limited to the name of the person issued the permit, license or  
9 exemption, the name of the business entity authorized to engage in  
10 business pursuant to the permit, license or exemption, the address  
11 of the business entity, and the grounds for revocation;

12 13. The posting of notice of revocation of any tax permit or  
13 license upon the premises of the place of business of any business  
14 entity which has had any tax permit or license revoked by the Tax  
15 Commission as provided for by law. Such notice shall be limited to  
16 the name of the person issued the permit or license, the name of the  
17 business entity authorized to engage in business pursuant to the  
18 permit or license, the address of the business entity, and the  
19 grounds for revocation;

20 14. The furnishing of information upon written request by any  
21 member of the general public as to the outstanding and unpaid amount  
22 due and owing by any taxpayer of this state for any delinquent tax,

1 together with penalty and interest, for which a tax warrant or a  
2 certificate of indebtedness has been filed pursuant to law;

3 15. After the filing of a tax warrant pursuant to law, the  
4 furnishing of information upon written request by any member of the  
5 general public as to any agreement entered into by the Tax  
6 Commission concerning a compromise of tax liability for an amount  
7 less than the amount of tax liability stated on such warrant;

8 16. The disclosure of information necessary to complete the  
9 performance of any contract authorized by Sections 255 and 262 of  
10 this title to any person with whom the Tax Commission has  
11 contracted;

12 17. The disclosure of information to any person for a purpose  
13 as authorized by the taxpayer pursuant to a waiver of  
14 confidentiality. The waiver shall be in writing and shall be made  
15 upon such form as the Tax Commission may prescribe;

16 18. The disclosure of information required in order to comply  
17 with the provisions of Section 2369 of this title;

18 19. The disclosure to an employer, as defined in Sections  
19 2385.1 and 2385.3 of this title, of information required in order to  
20 collect the tax imposed by Section 2385.2 of this title;

21 20. The disclosure to a plaintiff of a corporation's last-known  
22 address shown on the records of the Franchise Tax Division of the

1 Tax Commission in order for such plaintiff to comply with the  
2 requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

3 21. The disclosure of information directly involved in the  
4 resolution of the protest by a taxpayer to an assessment of tax or  
5 additional tax or the resolution of a claim for refund filed by a  
6 taxpayer, including the disclosure of the pendency of an  
7 administrative proceeding involving such protest or claim, to a  
8 person called by the Tax Commission as an expert witness or as a  
9 witness whose area of knowledge or expertise specifically addresses  
10 the issue addressed in the protest or claim for refund. Such  
11 disclosure to a witness shall be limited to information pertaining  
12 to the specific knowledge of that witness as to the transaction or  
13 relationship between taxpayer and witness;

14 22. The disclosure of information necessary to implement an  
15 agreement authorized by Section 2702 of this title when such  
16 information is directly involved in the resolution of issues arising  
17 out of the enforcement of a municipal sales tax ordinance. Such  
18 disclosure shall be to the governing body or to the municipal  
19 attorney, if so designated by the governing body;

20 23. The furnishing of information regarding incentive payments  
21 made pursuant to the provisions of Sections 3601 through 3609 of  
22 this title or incentive payments made pursuant to the provisions of  
23 Sections 3501 through 3508 of this title;

1        24. The furnishing to a prospective purchaser of any business,  
2 or his or her authorized representative, of information relating to  
3 any liabilities, delinquencies, assessments or warrants of the  
4 prospective seller of the business which have not been filed of  
5 record, established, or become final and which relate solely to the  
6 seller's business. Any disclosure under this paragraph shall only  
7 be allowed upon the presentment by the prospective buyer, or the  
8 buyer's authorized representative, of the purchase contract and a  
9 written authorization between the parties;

10       25. The furnishing of information as to the amount of state  
11 revenue affected by the issuance or granting of any tax permit,  
12 license, exemption, deduction, credit or other tax preference by the  
13 Tax Commission as provided for by law. Such information shall be  
14 limited to the type of permit, license, exemption, deduction, credit  
15 or other tax preference issued or granted, the date and duration of  
16 such permit, license, exemption, deduction, credit or other tax  
17 preference and the amount of such revenue. The provisions of this  
18 paragraph shall not authorize the disclosure of the name of the  
19 person issued such permit, license, exemption, deduction, credit or  
20 other tax preference, or the name of the business entity authorized  
21 to engage in business pursuant to the permit, license, exemption,  
22 deduction, credit or other tax preference; ~~or~~

1           26. The examination of records and files of a person or entity  
2 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs  
3 Control pursuant to a court order by a magistrate in whose  
4 territorial jurisdiction the person or entity resides, or where the  
5 Tax Commission records and files are physically located. Such an  
6 order may only be issued upon a sworn application by an agent of the  
7 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,  
8 certifying that the person or entity whose records and files are to  
9 be examined is the target of an ongoing investigation of a felony  
10 violation of the Uniform Controlled Dangerous Substances Act and  
11 that information resulting from such an examination would likely be  
12 relevant to that investigation. Any records or information obtained  
13 pursuant to such an order may only be used by the Oklahoma State  
14 Bureau of Narcotics and Dangerous Drugs Control in the investigation  
15 and prosecution of a felony violation of the Uniform Controlled  
16 Dangerous Substances Act. Any such order issued pursuant to this  
17 paragraph, along with the underlying application, shall be sealed  
18 and not disclosed to the person or entity whose records were  
19 examined, for a period of ninety (90) days. The issuing magistrate  
20 may grant extensions of such period upon a showing of good cause in  
21 furtherance of the investigation. Upon the expiration of ninety  
22 (90) days and any extensions granted by the magistrate, a copy of  
23 the application and order shall be served upon the person or entity

1 whose records were examined, along with a copy of the records or  
2 information actually provided by the Tax Commission; or

3 27. The furnishing of information requested by the Attorney  
4 General, district attorneys or law enforcement officials for any  
5 purpose, by a state agency for purposes of enforcing a compact  
6 entered into pursuant to Section 346 of this title and by the  
7 Governor for purposes of negotiating a compact entered into pursuant  
8 to Section 346 of this title.

9 D. The Tax Commission shall cause to be prepared and made  
10 available for public inspection in the office of the Tax Commission  
11 in such manner as it may determine an annual list containing the  
12 name and post office address of each person, whether individual,  
13 corporate, or otherwise, making and filing an income tax return with  
14 the Tax Commission.

15 It is specifically provided that no liability whatsoever, civil  
16 or criminal, shall attach to any member of the Tax Commission or any  
17 employee thereof for any error or omission of any name or address in  
18 the preparation and publication of the list.

19 E. The Tax Commission shall prepare or cause to be prepared a  
20 report on all provisions of state tax law that reduce state revenue  
21 through exclusions, deductions, credits, exemptions, deferrals or  
22 other preferential tax treatments. The report shall be prepared not  
23 later than October 1 of each even-numbered year and shall be

1 submitted to the Governor, the President Pro Tempore of the Senate  
2 and the Speaker of the House of Representatives. The Tax Commission  
3 may prepare and submit supplements to the report at other times of  
4 the year if additional or updated information relevant to the report  
5 becomes available. The report shall include, for the previous  
6 fiscal year, the Tax Commission's best estimate of the amount of  
7 state revenue that would have been collected but for the existence  
8 of each such exclusion, deduction, credit, exemption, deferral or  
9 other preferential tax treatment allowed by law. The Tax Commission  
10 may request the assistance of other state agencies as may be needed  
11 to prepare the report. The Tax Commission is authorized to require  
12 any recipient of a tax incentive or tax expenditure to report to the  
13 Tax Commission such information as requested so that the Tax  
14 Commission may provide the information to the Incentive Review  
15 Committee or fulfill its obligations as required by this subsection.  
16 The Tax Commission may require this information to be submitted in  
17 an electronic format. The Tax Commission may disallow any claim of  
18 a person for a tax incentive due to its failure to file a report as  
19 required under the authority of this subsection. The Tax Commission  
20 may consult with the Incentive Review Committee to develop a  
21 reporting system to obtain the information requested in a manner  
22 that is the least burdensome on the taxpayer.

1 F. It is further provided that the provisions of this section  
2 shall be strictly interpreted and shall not be construed as  
3 permitting the disclosure of any other information contained in the  
4 records and files of the Tax Commission relating to income tax or to  
5 any other taxes.

6 G. Unless otherwise provided for in this section, any violation  
7 of the provisions of this section shall constitute a misdemeanor and  
8 shall be punishable by the imposition of a fine not exceeding One  
9 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail  
10 for a term not exceeding one (1) year, or by both such fine and  
11 imprisonment, and the offender shall be removed or dismissed from  
12 office.

13 H. Offenses described in Section 2376 of this title shall be  
14 reported to the appropriate district attorney of this state by the  
15 Tax Commission as soon as the offenses are discovered by the Tax  
16 Commission or its agents or employees. The Tax Commission shall  
17 make available to the appropriate district attorney or to the  
18 authorized agent of the district attorney its records and files  
19 pertinent to prosecutions, and such records and files shall be fully  
20 admissible as evidence for the purpose of such prosecutions.

21 SECTION 2. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 300.1 of Title 68, unless there  
23 is created a duplication in numbering, reads as follows:

1 As used in this title, the term "Cigarette and Tobacco Products  
2 Tax Codes" shall mean and refer to Section 301 et seq., Section 326  
3 et seq., Section 346 et seq., Section 401 et seq., and Section 424  
4 et seq. of this title.

5 SECTION 3. AMENDATORY 68 O.S. 2001, Section 301, as  
6 amended by Section 1, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2005,  
7 Section 301), is amended to read as follows:

8 Section 301. For purposes of ~~Section 301 et seq. of this title~~  
9 the Cigarette and Tobacco Products Tax Codes:

10 1. The term "cigarette" is defined to mean and include all  
11 rolled tobacco or any substitute therefor, wrapped in paper or any  
12 substitute therefor and weighing not to exceed three (3) pounds per  
13 thousand cigarettes;

14 2. The term "person" is defined to mean and include any  
15 individual, company, partnership, joint venture, joint agreement,  
16 association (mutual or otherwise), limited liability company,  
17 corporation, estate, trust, business trust receiver, or trustee  
18 appointed by any state or federal court, or otherwise, syndicate, or  
19 any political subdivision of the state or combination acting as a  
20 unit, in the plural or singular number;

21 3. The term "wholesaler", ~~"distributor"~~ and/or ~~"jobber"~~ is  
22 defined to mean and include a person, firm or corporation organized  
23 and existing, or doing business, primarily to sell cigarettes or

1 tobacco products to, and render service to retailers in the  
2 territory such person, firm or corporation chooses to serve, and  
3 that:

- 4 a. purchases cigarettes or tobacco products directly from  
5 the manufacturer,
- 6 b. at least seventy-five percent (75%) of whose gross  
7 sales are made at wholesale,
- 8 c. handles goods in wholesale quantities and sells  
9 through salespersons, advertising and/or sales  
10 promotion devices,
- 11 d. carries at all times at its principal place of  
12 business a representative stock of cigarettes or  
13 tobacco products for sale, and
- 14 e. comes into the possession of cigarettes or tobacco  
15 products for the purpose of selling them to retailers  
16 or to persons outside or within the state who might  
17 resell or retail such cigarettes or tobacco products  
18 to consumers.

19 In addition to the foregoing, and irrespective of the percentage  
20 or type of sales, the term "wholesaler", "~~distributor~~" and/or  
21 "~~jobber~~" shall also include all purchasers of cigarettes or tobacco  
22 products making purchases directly from the manufacturer for

1 distribution at wholesale or retail sale and this shall not affect  
2 the requirements relating to retail licenses;

3 4. The term "retailer" is defined to be:

4 a. a person who comes into the possession of cigarettes  
5 or tobacco products for the purpose of selling, or who  
6 sells them at retail, or

7 b. a person, not coming within the classification of  
8 wholesaler, ~~distributor and/or jobber~~ as herein  
9 defined, having possession of more than one thousand  
10 cigarettes;

11 5. The term "consumer" is defined to be a person who receives  
12 or who in any way comes into possession of cigarettes or tobacco  
13 products for the purpose of consuming them, giving them away, or  
14 disposing of them in a way other than by sale, barter or exchange;

15 6. The term "Tax Commission" is defined to mean the Oklahoma  
16 Tax Commission;

17 7. The term "sale" and/or "sales" is hereby defined to be and  
18 declared to include sales, barter, exchanges and every other  
19 manner, method and form of transferring the ownership of personal  
20 property from one person to another, and is also declared to be the  
21 use or consumption in this state in the first instance of cigarettes  
22 or tobacco products received from without the state or of any other  
23 cigarettes or tobacco products upon which the tax has not been paid.

1 The term "first sale" shall mean and include the first sale or  
2 distribution of cigarettes or tobacco products in intrastate  
3 commerce or the first use or consumption of cigarettes or tobacco  
4 products within this state;

5 8. The term "stamp" as herein used shall mean the stamp or  
6 stamps by use of which:

- 7 a. the tax levied pursuant to the provisions of Section  
8 301 et seq. or Section 401 et. seq. of this title is  
9 paid,
- 10 b. the tax levied pursuant to the provisions of ~~Section~~  
11 Sections 349 or 426 of this title is paid, or
- 12 c. the payment in lieu of taxes authorized pursuant to a  
13 compact entered into by the State of Oklahoma and a  
14 federally recognized Indian tribe or nation pursuant  
15 to the provisions of subsection C of Section 346 of  
16 this title is paid;

17 9. The term "drop shipment" shall mean and include any delivery  
18 of cigarettes or tobacco products received by any person within this  
19 state when payment for such cigarettes ~~is~~ or tobacco products are  
20 made to the shipper or seller by or through a person other than the  
21 consignee;

22 10. The term "distributing agent" shall mean and include every  
23 person in this state who acts as an agent of any person outside the

1 state by receiving cigarettes or tobacco products in interstate  
2 commerce and storing such cigarettes or tobacco products subject to  
3 distribution or delivery upon order from the person outside the  
4 state to ~~distributors, wholesale dealers and retail dealers~~  
5 wholesalers and retailers, or to consumers. The term "distributing  
6 agent" shall also mean and include any person who solicits or takes  
7 orders for cigarettes or tobacco products to be shipped in  
8 interstate commerce to a person in this state by a person residing  
9 outside of Oklahoma, the tax not having been paid on such cigarettes  
10 or tobacco products;

11 11. The term "vending machine" shall mean and include any coin  
12 operating machine, contrivance, or device, by means of which  
13 cigarettes are sold or dispensed in their original container;

14 12. The term "use" means and includes the exercise of any right  
15 or power over cigarettes or tobacco products incident to the  
16 ownership or possession thereof, except that it shall not include  
17 the sale of cigarettes or tobacco products in the regular course of  
18 business;

19 13. a. The term "delivery sale" means any sale of cigarettes  
20 or tobacco products to a consumer in Oklahoma where  
21 either:

22 (1) the purchaser submits the order for such sale by  
23 means of a telephonic or other method of voice

1 transmission, the mails or any other delivery  
2 service, or the Internet or other online service,  
3 or

4 (2) the cigarettes or tobacco products are delivered  
5 by use of the mails or other delivery service.

6 b. A sale of cigarettes or tobacco products which  
7 satisfies the criteria in subparagraph a of this  
8 paragraph shall be a delivery sale regardless of  
9 whether the seller is located within or outside of  
10 Oklahoma.

11 c. A sale of cigarettes or tobacco products not for  
12 personal consumption to a person who is a wholesale  
13 dealer or a retail dealer shall not be a delivery  
14 sale.

15 d. For purposes of this paragraph, any sale of cigarettes  
16 or tobacco products to an individual in Oklahoma shall  
17 be treated as a sale to a consumer unless such  
18 individual is licensed as a ~~distributor~~ wholesaler or  
19 retailer of cigarettes or tobacco products by the Tax  
20 Commission;

21 14. The term "delivery service" means any person, including but  
22 not limited to the United States Postal Service, that is engaged in  
23 the commercial delivery of letters, packages, or other containers;

1        15. The term "manufacturer" means any person who manufactures,  
2 fabricates, assembles, processes, or labels a finished cigarette or  
3 tobacco product; or imports, either directly or indirectly, a  
4 finished cigarette or tobacco product for sale or distribution in  
5 this state;

6        16. The term "mails" or "mailing" means the shipment of  
7 cigarettes through the United States Postal Service;

8        17. The term "shipping container" means a container in which  
9 cigarettes are shipped in connection with a delivery sale; and

10       18. The term "shipping documents" means bills of lading,  
11 airbills, or any other documents used to evidence the undertaking by  
12 a delivery service to deliver letters, packages, or other  
13 containers.

14       SECTION 4.        AMENDATORY        68 O.S. 2001, Section 302, is  
15 amended to read as follows:

16       Section 302. There is hereby levied upon the sale, use, gift,  
17 possession, or consumption of cigarettes within the State of  
18 Oklahoma a tax at the rate of four (4) mills per cigarette.  
19 Beginning November 3, 1992, the revenue resulting from the tax  
20 levied pursuant to this section shall be apportioned by the Oklahoma  
21 Tax Commission and transmitted to the State Treasurer, who shall  
22 deposit the same in the Oklahoma Building Bonds of 1992 Sinking  
23 Fund. No part of the cigarette tax receipts derived from the

1 increase in the cigarette tax rate shall be used in determining the  
2 amount of cigarette tax collections to be paid into the State of  
3 Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the  
4 provisions of Sections 57.31 through 57.43 of Title 62 of the  
5 Oklahoma Statutes.

6 The tax hereby levied shall be paid only once by the wholesaler  
7 on any cigarettes sold, used, received, possessed, or consumed in  
8 this state. The tax shall be evidenced by stamps which shall be  
9 furnished by and purchased from the Tax Commission or by an  
10 impression of such tax by the use of a metering device when  
11 authorized by the Tax Commission as provided for in Section 301 et  
12 seq. of this title, and the stamps or impression shall be securely  
13 affixed to one end of each package in which cigarettes are contained  
14 or from which consumed.

15 ~~The impact of the tax levied by the provisions of Section 301 et~~  
16 ~~seq. of this title is hereby declared to be on the vendee, user,~~  
17 ~~consumer, or possessor~~ incidence of the tax is imposed on the  
18 wholesaler of cigarettes in this state, and, ~~when the tax is paid by~~  
19 ~~any other person, such payment shall be considered as an advance~~  
20 ~~payment and shall thereafter be added to the price of the cigarettes~~  
21 ~~and recovered from the ultimate consumer or user~~ such tax shall be  
22 paid but once. In making a sale of cigarettes in this state, a  
23 wholesaler ~~or jobber may~~ shall separately state and show upon the

1 invoice covering the sale the amount of tax paid on the cigarettes  
2 sold. The tax shall be evidenced by appropriate stamps attached to  
3 each package of cigarettes sold. Every retailer who makes sales of  
4 cigarettes within this state to persons for use or consumption shall  
5 separately show the amount of tax paid as evidenced by appropriate  
6 stamps on each package of cigarettes sold, ~~and the tax shall be~~  
7 ~~collected by the retailer from the user or consumer.~~ The provisions  
8 of this section shall in no way affect the method of collection of  
9 tax on cigarettes as now provided for by existing law. As to  
10 cigarettes packed in quantities of less than ten, for distribution  
11 as samples, payment of the tax may be made to the Tax Commission in  
12 a lump sum without affixing stamps on such packages.

13 ~~Notwithstanding any other provision of law, the tax levied~~  
14 ~~pursuant to the provisions of Section 301 et seq. of this title~~  
15 ~~shall be part of the gross proceeds or gross receipts from the sale~~  
16 ~~of cigarettes, as those terms are defined in paragraph 7 of Section~~  
17 ~~1352 of this title.~~

18 SECTION 5. AMENDATORY Section 3, Chapter 322, O.S.L.  
19 2004 (68 O.S. Supp. 2005, Section 302-6), is amended to read as  
20 follows:

21 Section 302-6. A. There is hereby created the Cigarette and  
22 Tobacco Tax Advisory Committee. The Committee shall consist of nine  
23 (9) members. Three members shall be appointed by the Governor,

1 three members shall be appointed by the President Pro Tempore of the  
2 Senate and three members shall be appointed by the Speaker of the  
3 House of Representatives. The initial appointments of each  
4 appointing authority shall be made for progressive terms of one (1)  
5 through three (3) years so that the term of only one member  
6 appointed by each appointing authority expires each calendar year;  
7 subsequent appointments shall be for three-year terms. Members  
8 shall continue to serve until their successors are appointed. Any  
9 vacancy shall be filled in the same manner as the original  
10 appointments. Five members shall constitute a quorum. The  
11 Committee shall be composed as follows:

- 12 1. The Governor shall appoint three members as follows:
  - 13 a. one member who shall be a retailer of cigarettes and  
14 tobacco products licensed by a federally recognized  
15 Indian tribe or nation,
  - 16 b. one member who shall be a nontribal retailer of  
17 cigarettes and tobacco products, and
  - 18 c. one member who shall be a wholesaler of cigarettes and  
19 tobacco products;
- 20 2. The President Pro Tempore of the Senate shall appoint three  
21 members as follows:

- 1           a.    one member who shall be a retailer of cigarettes and  
2                    tobacco products licensed by a federally recognized  
3                    Indian tribe or nation,  
4           b.    one member who shall be a nontribal retailer of  
5                    cigarettes and tobacco products, and  
6           c.    one member who shall be primarily engaged in the  
7                    retail sales of groceries in this state;

8           3.    The Speaker of the House of Representatives shall appoint  
9 three members as follows:

- 10           a.    one member who shall be a retailer of cigarettes and  
11                    tobacco products licensed by a federally recognized  
12                    Indian tribe or nation,  
13           b.    one member who shall be a nontribal retailer of  
14                    cigarettes and tobacco products, and  
15           c.    one member who shall be primarily engaged in the  
16                    practice of law or financial services.

17           B.    The Committee shall annually elect a chair and a vice-chair  
18 from among its members. The Committee shall meet as desired to  
19 review proposed rules of the Oklahoma Tax Commission and discuss  
20 other issues relating to the implementation and enforcement of the  
21 levy, collections and remittance of taxes on cigarettes and tobacco  
22 products in this state.

1 C. The Committee may recommend to the Oklahoma Tax Commission  
2 rules to implement and enforce the provisions of this act and other  
3 provisions of law relating to the levy, collection and remittance of  
4 taxes on cigarettes and tobacco products in this state. The Tax  
5 Commission shall consider comments submitted by the Committee prior  
6 to the adoption of a proposed rule. Prior to the adoption of any  
7 rule or amendment or revocation of a rule relating to the  
8 administration of taxes levied on cigarettes and tobacco products,  
9 the Tax Commission shall send notice of any intended action to the  
10 members of the Committee. If the intended action relates to  
11 permanent rulemaking, such notice shall be given ~~at least thirty~~  
12 ~~(30) days prior to publication of notice of intended rulemaking~~  
13 ~~action required under~~ in the same manner as other notices are given  
14 pursuant to the provisions of Section 303 of Title 75 of the  
15 Oklahoma Statutes. If the intended action relates to emergency  
16 rulemaking, the Tax Commission will provide the Committee as much  
17 notice as practicable prior to the rulemaking action. The Committee  
18 may submit comments on issues related to the intended rulemaking  
19 action including, but not limited to, identifying portions of the  
20 industry affected, probable economic impact, and any costs or  
21 benefits to the industry.

22 D. In addition to making recommendations, the Committee may  
23 represent the industry in communicating concerns to the Tax

1 Commission about issues related to the levy and remittance of taxes  
2 pursuant to Section 301 et seq. of Title 68 of the Oklahoma Statutes  
3 and Section 401 et seq. of Title 68 of the Oklahoma Statutes.

4 E. Members of the Committee shall serve without compensation  
5 but may be reimbursed expenses incurred in the performance of their  
6 duties by their respective appointing authorities, as provided in  
7 the State Travel Reimbursement Act.

8 SECTION 6. AMENDATORY 68 O.S. 2001, Section 304, as last  
9 amended by Section 6, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005,  
10 Section 304), is amended to read as follows:

11 Section 304. A. Every manufacturer, and wholesaler,  
12 ~~warehouseman, jobber or distributor~~ of cigarettes in this state, as  
13 a condition of carrying on such business, shall annually secure from  
14 the Oklahoma Tax Commission a written license, and shall pay  
15 therefor an annual fee of ~~Twenty-five Dollars (\$25.00)~~ Two Hundred  
16 Fifty Dollars (\$250.00). Application for such license shall be made  
17 upon such forms as prescribed by the Oklahoma Tax Commission, which  
18 shall include, as a required part of the application, the  
19 applicant's agreement to the jurisdiction of the Tax Commission and  
20 the courts of this state for the purpose of enforcement of the  
21 provisions of the Cigarette and Tobacco Products Tax Code. The  
22 applicant, by submitting the application, further agrees to abide by  
23 the provisions of the Cigarette and Tobacco Products Tax Code and

1 the rules promulgated by the Tax Commission with reference thereto.  
2 This license, which will be for the ensuing year, must at all times  
3 be displayed in a conspicuous place so that it can be seen. Persons  
4 operating more than one place of business must secure a license for  
5 each place of business. "Place of business" shall be construed to  
6 include the place where orders are received, or where cigarettes are  
7 sold. If cigarettes are sold on or from any vehicle, the vehicle  
8 shall constitute a place of business and the regular license fee ~~of~~  
9 ~~Twenty-five Dollars (\$25.00)~~ shall be paid with respect thereto.  
10 However, if the vehicle is owned or operated by a place of business  
11 for which the regular ~~Twenty-five Dollars (\$25.00)~~ fee is paid, the  
12 annual fee for the license with respect to such vehicle shall be  
13 only Ten Dollars (\$10.00). The expiration for such vehicle license  
14 shall expire on the same date as the current license of the place of  
15 business.  
16 Provided, that the Tax Commission shall not authorize the use of a  
17 stamp-metering device by any manufacturer, or wholesaler,  
18 ~~warehouseman, jobber or distributor~~ who does not maintain a warehouse  
19 or wholesale establishment or place of business within the State of  
20 Oklahoma from which cigarettes are received, stocked and sold and  
21 where such metering device is kept and used; but the Tax Commission  
22 may, in its discretion, permit the use of such metering device by  
23 manufacturers, and wholesalers, ~~warehousemen, jobbers or distributors~~

1 of cigarettes residing wholly within another state where such state  
2 permits a licensed Oklahoma resident, manufacturer, or wholesaler,  
3 ~~warehouseman, jobber or distributor~~ of cigarettes the use of the  
4 metering device of such state without first requiring that such  
5 manufacturer, or wholesaler, ~~warehouseman, jobber or distributor~~  
6 establish a place of business in such other state. The provisions of  
7 this subsection relating to metering devices shall not apply to  
8 states which do not require the affixing of tax stamps to packages of  
9 cigarettes before same are offered for sale in such states.

10 B. Every retailer of cigarettes or tobacco products in this  
11 state, as a condition of carrying on such business, shall secure  
12 from the Tax Commission a license and shall pay therefor a fee of  
13 Thirty Dollars (\$30.00). Application for such license shall be made  
14 upon such forms as prescribed by the Tax Commission, which shall  
15 include, as a required part of the application, the applicant's  
16 agreement to the jurisdiction of the Tax Commission and the courts  
17 of this state for the purpose of enforcement of the provisions of  
18 the Cigarette and Tobacco Products Tax Code. The applicant, by  
19 submitting the application, further agrees to abide by the  
20 provisions of the Cigarette and Tobacco Products Tax Code and the  
21 rules promulgated by the Tax Commission with reference thereto.  
22 Further, the applicant agrees that it shall not purchase any  
23 cigarettes for resale from a supplier that does not hold a current

1 wholesaler's license issued pursuant to this section, and the  
2 applicant agrees to sell cigarettes and tobacco products only to  
3 consumers. Such license, which will be for the ensuing three (3)  
4 years, must at all times be displayed in a conspicuous place so that  
5 it can be seen. Upon expiration of such license, the retailer to  
6 whom such license was issued may obtain a renewal license which  
7 shall be valid for three (3) years or until expiration of the  
8 retailer's sales tax permit, whichever is earlier, after which a  
9 renewal license shall be valid for three (3) years. The manner and  
10 prorated fee for renewals shall be prescribed by the Tax Commission.  
11 Every person operating under such license as a retailer and who owns  
12 or operates more than one place of business must secure a license  
13 for each place of business. "Place of business" shall be construed  
14 to include places where orders are received or where cigarettes are  
15 sold.

16 C. Every distributing agent shall, as a condition of carrying  
17 on such business, pursuant to written application on a form  
18 prescribed by and in such detailed form as the Tax Commission may  
19 require, annually secure from the Tax Commission a license, and  
20 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).  
21 An application shall be filed and a license obtained for each place  
22 of business owned or operated by a distributing agent. The license,  
23 which will be for the ensuing year, shall be consecutively numbered,

1 nonassignable and nontransferable, and shall authorize the storing  
2 and distribution of unstamped cigarettes within this state when such  
3 distribution is made upon interstate orders only.

4 D. 1. All wholesale, retail, and distributing agent's licenses  
5 shall be nonassignable and nontransferable from one person to  
6 another person. Such licenses may be transferred from one location  
7 to another location after an application has been filed with the Tax  
8 Commission requesting such transfer and after the approval of the  
9 Tax Commission.

10 2. Wholesale, retail, and distributing agent's licenses shall  
11 be applied for on a form prescribed by the Tax Commission. Any  
12 person operating as a wholesaler, retailer, or distributing agent  
13 must at all times have an effective unexpired license which has been  
14 issued by the Tax Commission. If any such person or licensee  
15 continues to operate as such on a license issued by the Tax  
16 Commission which has expired, or operates without ever having  
17 obtained from the Tax Commission such license, such person or  
18 licensee shall, after becoming delinquent for a period in excess of  
19 fifteen (15) days, pay to the Tax Commission, in addition to the  
20 annual license fee, a penalty of twenty-five cents (\$0.25) per day  
21 on each delinquent license for each day so operated in excess of  
22 fifteen (15) days. The penalty provided for herein shall not exceed  
23 the annual license fee for such license.

1 E. No license may be granted, maintained or renewed if any of  
2 the following conditions applies to the applicant. For purposes of  
3 this section, "applicant" includes any combination of persons owning  
4 directly or indirectly, in the aggregate, more than ten percent  
5 (10%) of the ownership interests in the applicant:

6 1. The applicant owes Five Hundred Dollars (\$500.00) or more in  
7 delinquent cigarette taxes;

8 2. The applicant had a cigarette manufacturer, wholesaler,  
9 retailer or distributor license revoked by the Tax Commission within  
10 the past two (2) years;

11 3. The applicant has been convicted of a crime relating to  
12 stolen or counterfeit cigarettes, or receiving stolen or counterfeit  
13 cigarettes or has been convicted of or has entered a plea of guilty  
14 or of nolo contendere to any felony;

15 4. If the applicant is a cigarette manufacturer, the applicant  
16 is neither:

17 a. a participating manufacturer as defined in Section II  
18 (jj) of the Master Settlement Agreement as defined in  
19 Section 600.22 of Title 37 of the Oklahoma Statutes,  
20 nor

21 b. in full compliance with the provisions of paragraph 2  
22 of subsection A of Section 600.23 of Title 37 of the  
23 Oklahoma Statutes;

1           5. If the applicant is a cigarette manufacturer, if any  
2 cigarette imported by such applicant is imported into the United  
3 States in violation of 19 U.S.C., Section 1681a; or

4           6. If the applicant is a cigarette manufacturer, if any  
5 cigarette imported or manufactured by the applicant does not fully  
6 comply with the Federal Cigarette Labeling and Advertising Act, 15  
7 U.S.C., Section 1331 et seq.

8           F. No person or entity licensed pursuant to the provisions of  
9 this section shall purchase cigarettes from or sell cigarettes to a  
10 person or entity required to obtain a license unless such person or  
11 entity has obtained such license. Further, no person or entity  
12 licensed pursuant to the provisions of this section shall sell  
13 cigarettes or tobacco products to any tribally owned or licensed  
14 store unless it is on the list of tribally owned and licensed stores  
15 maintained and supplied by the Tax Commission.

16           G. No person licensed as a retailer in this state shall sell  
17 any cigarettes to any other person licensed as a retailer in this  
18 state unless such sale is for the purpose of moving inventory  
19 between stores which are part of the same company.

20           H. In addition to any civil or criminal penalty provided by  
21 law, upon a finding that a licensee has violated any provision of  
22 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
23 Tax Codes, the Tax Commission may revoke or suspend the license or

1 licenses of the licensee pursuant to the procedures applicable to  
2 revocation of a license set forth in Section 316 of this title.

3 ~~H.~~ I. The Tax Commission shall create and maintain a web site  
4 setting forth all current valid licenses and the identity of  
5 licensees holding such licenses, and shall update the site no less  
6 frequently than once per month.

7 SECTION 7. AMENDATORY 68 O.S. 2001, Section 305, as  
8 amended by Section 3, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2005,  
9 Section 305), is amended to read as follows:

10 Section 305. A. Every wholesaler, ~~jobber, distributor, or~~  
11 ~~warehouseman~~ doing business within this state and required to secure  
12 a license as provided under Section 304 of this title shall, upon  
13 withdrawal from storage, and before making any sale or distribution  
14 of cigarettes for consumption thereof, affix or cause the same to  
15 have affixed thereto the stamp or stamps applicable to the location  
16 of the retailer or tribally owned or licensed retailer at which the  
17 cigarettes are to be sold, regardless of the identity of the  
18 retailer to which the cigarettes have been sold, shipped, consigned  
19 or delivered as required by ~~Section 301 et seq. of this title~~ the  
20 Cigarette and Tobacco Products Tax Codes. It shall be the duty of  
21 the wholesaler, ~~jobber, distributor, or warehouseman~~ to supply and  
22 ~~charge to the retailer~~ the necessary stamps applicable to the  
23 location of the retailer or tribally owned or licensed retailer at

1 which the cigarettes are to be sold, regardless of the identity of  
2 the retailer to which the cigarettes have been sold, shipped,  
3 consigned or delivered to cover any and all drop shipments of  
4 cigarettes billed to the retailer or consumer by the wholesaler,  
5 ~~jobber, distributor, or warehouseman~~; and the wholesaler, ~~jobber,~~  
6 ~~distributor, or warehouseman~~ shall be liable to the Oklahoma Tax  
7 Commission to perform this service. ~~Distributors~~ Wholesalers may  
8 apply stamps only to cigarette packages that they have received  
9 directly from a manufacturer or importer of cigarettes who possesses  
10 a valid and current permit under Section 5712 of Title 26 of the  
11 United States Code.

12 B. Every retailer who has received cigarettes from a  
13 manufacturer, or ~~wholesaler, jobber, warehouseman or distributor~~ not  
14 required to secure a license as provided for under Section 304 of  
15 this title, or to affix stamps as required under subsection A of  
16 this section, shall, within seventy-two (72) hours, excluding  
17 Sundays and holidays, from the time such cigarettes come into the  
18 retailer's possession, and before making any sale or distribution  
19 for consumption thereof, affix stamps upon all cigarette packages in  
20 the proper denomination and amount, as required by Section 302 of  
21 this title.

22 C. ~~Any unlicensed consumer who buys direct from any~~  
23 ~~distributor, jobber, manufacturer, warehouseman, or wholesaler, or~~

1 ~~other person, within or without this state, any cigarettes in excess~~  
2 ~~of forty (40), at any one time to which are not affixed the stamps~~  
3 ~~required by Section 301 et seq. of this title shall, before~~  
4 ~~purchasing such cigarettes, secure from the Tax Commission a written~~  
5 ~~license and shall pay therefor an annual fee of Twenty-five Dollars~~  
6 ~~(\$25.00), and shall immediately, upon the receipt of any unstamped~~  
7 ~~cigarettes, report the same to the Tax Commission on such forms as~~  
8 ~~the Tax Commission may prescribe, and immediately purchase from the~~  
9 ~~Tax Commission proper stamps and attach the same to all such~~  
10 ~~cigarettes received.~~ It shall be unlawful for any person to sell or  
11 consume cigarettes on which the tax, as levied by Section 301 et  
12 seq. of this title, has not been paid, and which are not contained  
13 in packages to which are securely affixed the stamps evidencing  
14 payment of the tax imposed by Section 301 et seq. of this title.

15 D. If, upon examination of invoices or from other  
16 investigations, the Tax Commission finds that cigarettes have been  
17 sold without stamps affixed as required by ~~Section 301 et seq. of~~  
18 ~~this title~~ the Cigarette and Tobacco Products Tax Codes, the Tax  
19 Commission shall have the power to require such person to pay to the  
20 Tax Commission a sum equal to twice the amount of the tax due. If,  
21 under the same circumstances, a person is unable to furnish evidence  
22 to the Tax Commission of sufficient stamp purchases to cover  
23 unstamped cigarettes purchased, the prima facie presumption shall

1 arise that such cigarettes were sold without proper stamps being  
2 affixed thereto.

3 E. 1. All ~~unstamped~~ contraband cigarettes upon which taxes are  
4 imposed by ~~Section 301 et seq. of this title~~ the Cigarette and  
5 Tobacco Products Tax Codes and all cigarettes stamped, sold, offered  
6 for sale, or imported into this state in violation of the provisions  
7 of Section 305.1 of this title which shall be found in the  
8 possession, custody, or control of any person, for the purpose of  
9 being consumed, sold or transported from one place to another in  
10 this state, for the purpose of evading or violating the provisions  
11 of ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco  
12 Products Tax Codes, or with intent to avoid payment of the tax  
13 imposed hereunder, and any automobile, truck, conveyance, or other  
14 vehicle whatsoever used in the transportation of such cigarettes,  
15 and all paraphernalia, equipment or other tangible personal property  
16 incident to the use of such purposes, found in the place, building,  
17 vehicle or vehicles, where such cigarettes are found, may be seized  
18 by any authorized agent of the Tax Commission, or any sheriff,  
19 deputy sheriff, constable or other peace officer within the state,  
20 without process. The same shall be, from the time of such seizure,  
21 forfeited to the State of Oklahoma, and a proper proceeding filed in  
22 a court of competent jurisdiction in the county of seizure, to

1 maintain such seizure and prosecute the forfeiture as herein  
2 provided.

3       2. All such cigarettes, vehicles and property so seized shall  
4 first be listed and appraised by the officer making such seizure and  
5 turned over to the county sheriff of the county in which the seizure  
6 is made and a receipt therefor taken. The person making such  
7 seizure shall immediately make and file a written report thereof,  
8 showing the name of the person making such seizure, the place, and  
9 the person where, and from whom such property was seized, and an  
10 inventory and appraisal thereof, at the usual and ordinary retail  
11 price of such articles received, to the Tax Commission, or the  
12 Attorney General, in the case of cigarettes stamped, sold, offered  
13 for sale, or imported into this state in violation of the provisions  
14 of Section 305.1 of this title. The district attorney of the county  
15 in which the seizures are made shall, at the request of the Tax  
16 Commission or Attorney General, file in the district court  
17 forfeiture proceedings in the name of the State of Oklahoma, as  
18 plaintiff, and in the name of the owner or person in possession, as  
19 defendant, if known, and if unknown in the name of the property  
20 seized. The clerk of the court shall issue summons to the owner or  
21 person in whose possession such property was found, directing the  
22 owner or person to answer within ten (10) days. If the property is  
23 declared forfeited and ordered sold, notice of the sale shall be

1 posted in five public places in the county not less than ten (10)  
2 days before the date of sale; provided, cigarette packages or  
3 containers as described in Section 305.1 of this title shall only be  
4 sold for export outside the United States or as otherwise permitted  
5 by federal law. The proceeds of the sale shall be deposited with  
6 the clerk of the court, who shall after deducting costs, including  
7 the costs of sale, ~~pay the balance to the Tax Commission as~~  
8 ~~cigarette tax collected, or in the case of cigarettes seized as~~  
9 ~~being in violation of the provisions of Section 305.1 of this title,~~  
10 ~~to the Attorney General. The Attorney General shall remit the~~  
11 ~~amount of cigarette tax, if any be due, including all penalties and~~  
12 ~~interest due, to the Tax Commission as cigarette tax collected and~~  
13 ~~shall deposit the remainder to the revolving fund created in Section~~  
14 ~~305.2 of this title~~ distribute cash and the proceeds of the sale of  
15 such cigarettes, vehicles and other property as follows, in the  
16 order indicated:

- 17       a. to the bona fide or innocent owner, conditional sales  
18       vendor, or mortgagee of the property, if any, up to  
19       the amount of such person's interest in the property,  
20       when the court declaring the forfeiture orders a  
21       distribution to such person,  
22       b. to the payment of the actual reasonable expenses of  
23       preserving the property, and

1           c. the balance to a revolving fund in the office of the  
2           county treasurer of the county wherein the property  
3           was seized, to be distributed as follows: one-third  
4           (1/3) to the investigating law enforcement agency;  
5           one-third (1/3) of said fund to be used and maintained  
6           as a revolving fund by the district attorney for the  
7           victim-witness fund, a reward fund or the evidence  
8           fund; and one-third (1/3) to go to the jail  
9           maintenance fund, with a yearly accounting to the  
10           board of county commissioners in whose county the fund  
11           is established. If the petitioner is not the district  
12           attorney, then the one-third (1/3) which would have  
13           been designated to that office shall be distributed to  
14           the petitioner. Monies distributed to the jail  
15           maintenance fund shall be used to pay costs for the  
16           storage of such property if such property is ordered  
17           released to a bona fide or innocent owner, lien  
18           holder, mortgagee, or vendor and if such funds are  
19           available in said fund.

20           3. The seizure and sale of cigarettes shall not relieve the  
21 person from whom such cigarettes were seized from any prosecution or  
22 the payment of any penalties provided for under ~~Section 301 et seq.~~  
23 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes; nor

1 shall it relieve the purchaser thereof from any payment of the  
2 regular cigarette tax and the placing of proper stamps thereon  
3 before making any sale of the cigarettes or the personal consumption  
4 of the same.

5 4. The forfeiture provisions of ~~Section 301 et seq. of this~~  
6 ~~title~~ the Cigarette and Tobacco Products Tax Codes shall only apply  
7 to persons having possession of or transporting cigarettes with  
8 intent to barter, sell or give away the same; provided, that such  
9 possession of cigarettes in any quantity of five or more cartons of  
10 ten packages each shall be prima facie evidence of intent to barter,  
11 sell or give away such cigarettes in violation of the provisions of  
12 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
13 Tax Codes.

14 F. The Tax Commission shall exchange new stamps for any stamps  
15 which are damaged, or for stamps which have been affixed to packages  
16 of cigarettes returned to factories, or shipped to other states, or  
17 sold to government agencies or state institutions, or for stamps  
18 purchased in excess of floor stocks. Application to the Tax  
19 Commission for such exchanges must be accompanied by affidavit,  
20 damaged stamps, bill of lading covering shipment to factory or other  
21 states, or other proof required by the Tax Commission. Any person  
22 to whom stamps shall be issued under this paragraph may, upon

1 approval of the Tax Commission, sell such stamps to any wholesaler  
2 as defined in Section ~~301 et seq.~~ 302 of this title.

3 G. Any person, including distributing agents, wholesalers,  
4 ~~jobbers,~~ carriers, ~~warehousemen,~~ retailers and consumers, having  
5 possession of unstamped cigarettes in this state shall be liable for  
6 the tax on such cigarettes in case the same are lost, stolen or  
7 unaccounted for, in transit, storage or otherwise, and in such event  
8 a presumption shall exist for the purposes of taxation, that such  
9 cigarettes were used and consumed in Oklahoma.

10 SECTION 8. AMENDATORY 68 O.S. 2001, Section 306, is  
11 amended to read as follows:

12 Section 306. It shall be unlawful for any person to sell, or  
13 display for sale, or have in his possession for consumption in this  
14 state, cigarettes or tobacco products on which the tax levied by  
15 ~~this article~~ the Cigarette and Tobacco Products Tax Codes has not  
16 been paid, and which are not contained in packages to which are  
17 securely affixed the stamps evidencing payment of the tax as  
18 required by the Cigarette and Tobacco Products Tax Codes. Any  
19 cigarettes or tobacco products so held shall be subject to seizure  
20 and sale as provided by law for sale of property under execution,  
21 and the proceeds derived from the sale thereof shall be paid to the  
22 State Treasurer and placed in the State General Revenue Fund.

1 SECTION 9. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 306.1 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. In the event the tax imposed by the Cigarette and Tobacco  
5 Products Tax Codes is not otherwise paid, it shall be collected from  
6 the ultimate consumer in accordance with rules promulgated by the  
7 Oklahoma Tax Commission.

8 B. The wholesaler or retailer, other than a federally  
9 recognized Indian tribe, shall be jointly and severally liable for  
10 the tax provided by subsection A of this section if the wholesaler  
11 or retailer knows or has reason to know that the cigarette or  
12 tobacco product, as to which tax imposed by the Cigarette and  
13 Tobacco Products Tax Codes has not been paid, is or will be consumed  
14 in a nonexempt use.

15 C. In the event the tax imposed by Cigarette and Tobacco  
16 Products Tax Codes is not paid and must be collected from the  
17 consumer in accordance with the provisions of this section, the tax  
18 is due and payable by the consumer on the first day of each month  
19 for the preceding calendar month, and if not paid on or before the  
20 fifteenth day of the following month, shall be delinquent. The  
21 consumer shall file with the Tax Commission, on forms furnished by  
22 the Tax Commission, a return verified by affidavit showing in detail  
23 the total number of cigarettes or tobacco products purchased, the

1 location of the purchase and any other information the Tax  
2 Commission may deem reasonably necessary. With each return, the  
3 consumer shall remit to the Tax Commission the amount of tax shown  
4 on the return to be due. Reports timely mailed shall be considered  
5 timely filed. If a report is not timely filed, interest shall be  
6 charged from the date the report should have been filed until the  
7 report is actually filed.

8 SECTION 10. AMENDATORY 68 O.S. 2001, Section 308, is  
9 amended to read as follows:

10 Section 308. (a) The stamps placed upon packages of cigarettes  
11 shall be purchased by the Oklahoma Tax Commission in proper  
12 denominations, shall contain the words "Oklahoma Tax Commission",  
13 and shall be of such design, character, color combinations, color  
14 changes, sizes and material as the Tax Commission may, by its rules  
15 ~~and regulations~~, determine to afford the best security to the state.  
16 The Tax Commission may require of the manufacturer from whom it  
17 purchases such stamps a bond in an amount to be determined by the  
18 Tax Commission, containing such conditions as the Tax Commission may  
19 deem necessary in order to protect the state against loss. The Tax  
20 Commission shall be responsible for the custody and sale of the  
21 stamps, and for the disposition of the proceeds thereof. It shall  
22 be the duty of the Tax Commission to manufacture or contract for  
23 revenue stamps required by this article; provided, that if such

1 stamps are contracted for, the manufacture thereof shall be within  
2 the jurisdiction of the criminal and civil courts of this state,  
3 unless such stamps cannot be obtained in this state at a fair price  
4 or of acceptable quality. If stamps are manufactured outside of the  
5 state, then the Tax Commission shall keep a reliable agent at the  
6 place of manufacture during the period of manufacture and such agent  
7 shall be authorized and instructed to take any and all precautions  
8 necessary to safeguard the state against forgery and misdelivery of  
9 any stamps. The Tax Commission shall, in contracting for  
10 manufacture, consider the safeguarding of stamps to be of paramount  
11 importance and shall provide therefor in a manner commensurate with  
12 the monetary value of such stamps.

13 (b) The Tax Commission shall, under rules and regulations  
14 promulgated by the Tax Commission, exchange new stamps or give  
15 credit for any stamps affixed to any cigarettes which stamps have  
16 become unfit for use or consumption or unsalable.

17 (c) Any person to whom stamps shall be issued hereunder may,  
18 upon notice and approval of the Tax Commission, sell such stamps to  
19 any licensed manufacturer, or wholesaler, ~~warehouseman, jobber~~  
20 ~~and/or retailer~~.

21 (d) The Commission shall sell the stamps to all licensed  
22 manufacturers, wholesalers, ~~warehousemen and/or jobbers~~, retailers,  
23 or consumers, who have purchased cigarettes from wholesalers or

1 jobbers within or without the State of Oklahoma, doing business  
2 within the State of Oklahoma. All orders for stamps must be  
3 accompanied by cash, cashier's check or money order, made payable to  
4 the Oklahoma Tax Commission; provided, however, that the Tax  
5 Commission may accept personal checks in payment for such stamps  
6 upon a determination by the Tax Commission that the purchaser  
7 thereof is financially responsible.

8 SECTION 11. AMENDATORY 68 O.S. 2001, Section 309, is  
9 amended to read as follows:

10 Section 309. (a) The right of a ~~common~~ carrier in this state  
11 to carry unstamped cigarettes, as defined in this article, shall not  
12 be affected by this article; provided that ~~common~~ carriers  
13 delivering unstamped cigarettes to any person in this state for the  
14 purpose of selling or consuming unstamped cigarettes in this state  
15 in violation of Section 301 et seq. of this title or this act shall  
16 be subject to seizure of the shipments and forfeiture of the  
17 inventory pursuant to the provisions of Section 305 of this title.  
18 Should any ~~common~~ carrier sell cigarettes to its passengers while  
19 being carried in this state, the sale shall be subject to the stamp  
20 tax and other provisions of this article, and to the rules and  
21 regulations of the Tax Commission.

22 (b) ~~Common carriers~~ Carriers transporting cigarettes to a point  
23 within the state, or a bonded warehouseman or bailee having

1 possession of cigarettes, are required, under this article and the  
2 rules and regulations to be prescribed by the Tax Commission, to  
3 transmit to the Tax Commission a statement of such consignment of  
4 cigarettes, showing the date, point of origin, point of delivery,  
5 and to whom delivered, and such other information as the Tax  
6 Commission may require. All ~~common~~ carriers, bailees or  
7 warehousemen shall permit an examination by the Tax Commission, or  
8 its agents or legally authorized representatives, of their records  
9 relating to the shipment or receipt of cigarettes. Any person who  
10 fails or refuses to transmit to the Tax Commission the statements  
11 above provided for, or whoever refuses to permit the examination of  
12 the records by the Tax Commission, shall be guilty of a misdemeanor.

13 SECTION 12. AMENDATORY 68 O.S. 2001, Section 312, is  
14 amended to read as follows:

15 Section 312. ~~(a)~~ A. Every person subject to the payment of a  
16 tax hereunder shall keep in Oklahoma accurate records covering the  
17 business carried on and shall for three (3) years, and more if  
18 required by the rules and regulations of the Oklahoma Tax  
19 Commission, keep and preserve all invoices, showing all purchases  
20 and sales of cigarettes; and such invoices and stock of cigarettes  
21 shall at all times be subject to the examination and inspection of  
22 any member or legally authorized agent or representative of the Tax  
23 Commission, in the enforcement of this article. Every wholesaler,

1 ~~jobber, warehouseman~~ or retailer operating in the State of Oklahoma,  
2 whose main warehouse or headquarters is in another state shall keep  
3 all records of all cigarette transactions made by him or her at his  
4 or her place of business in Oklahoma, or at a designated place in  
5 the State of Oklahoma.

6 ~~(b)~~ B. Every wholesaler and retailer receiving unstamped  
7 cigarettes shall file a report with the Tax Commission on or before  
8 the ~~10th~~ tenth day of each month covering the previous calendar  
9 month, on forms prescribed and furnished by the Tax Commission,  
10 disclosing the beginning and closing inventory of unstamped  
11 cigarettes, the beginning and closing inventory of stamped  
12 cigarettes, the beginning and closing inventory of cigarette stamps,  
13 the number and denomination of cigarette stamps affixed to packages  
14 of cigarettes, and all purchases of cigarettes by showing the  
15 invoice number, name and address of the consignee or seller, the  
16 date, and the number of cigarettes purchased, and such other  
17 information as may be required by the Tax Commission. Retailers or  
18 consumers purchasing cigarettes in drop shipments shall be required  
19 to make monthly reports to the Commission as are required of  
20 wholesale dealers.

21 ~~(c)~~ C. Every distributing agent shall, except as otherwise  
22 provided herein, keep at each place of business in Oklahoma for a  
23 period of three (3) years for inspection by the Tax Commission a

1 complete record of all cigarettes received by him, including all  
2 orders, invoices, bills of lading, waybills, freight bills, express  
3 receipts, and all other shipping records which are furnished to the  
4 distributing agent by the carrier and the shipper of said  
5 cigarettes, or copies thereof, and, in addition thereto, a complete  
6 record of each and every distribution or delivery made by said  
7 distributing agent. Such records of distribution or delivery shall  
8 include all orders, invoices or copies thereof, all other shipping  
9 records furnished by the carrier, and the person ordering  
10 distribution or delivery of the cigarettes.

11 ~~(d)~~ D. Upon a form to be prescribed by the Tax Commission,  
12 every distributing agent in Oklahoma shall report each day, except  
13 Sundays and holidays, to the Tax Commission all deliveries of  
14 cigarettes made on the preceding day or days. The reports shall  
15 show the name of the person ordering the delivery, date of delivery,  
16 name and address of the person to whom delivered, the invoice  
17 number, bill of lading or waybill number, the number and kind of  
18 cigarettes delivered, the means of delivery and/or the  
19 transportation agent and the destination of drop shipment, if a drop  
20 shipment. However, if the invoice furnished the distributing agent  
21 by the manufacturer or other person ordering such delivery, or the  
22 bill of lading prepared by said distributing agent to cover the  
23 shipment under said invoice, contains all the information required

1 to be reported, it will be sufficient to send a copy of said invoice  
2 or invoices, or a copy of said bill of lading or bills of lading, to  
3 the Tax Commission.

4 E. Every wholesaler or manufacturer required to make any report  
5 required by this section shall submit such report electronically as  
6 prescribed by the Tax Commission pursuant to Section 312.1 of this  
7 title.

8 SECTION 13. AMENDATORY Section 4, Chapter 475, O.S.L.  
9 2003, as amended by Section 7, Chapter 479, O.S.L. 2005 (68 O.S.  
10 Supp. 2005, Section 312.1), is amended to read as follows:

11 Section 312.1 A. The Oklahoma Tax Commission, if in its  
12 discretion it deems practical and reasonable, may establish  
13 procedures for maintaining records and filing reports containing the  
14 information required by this section. The exercise by the Tax  
15 Commission of the authority granted in this subsection shall be by  
16 adoption of rules necessary to establish procedures that increase  
17 compliance with the requirements of this article. ~~If the Tax~~  
18 ~~Commission determines to utilize its discretion, the provisions of~~  
19 ~~subsections B through J of this section shall apply.~~

20 B. Every wholesaler ~~and distributor~~ receiving cigarettes shall  
21 submit periodic reports containing the information required by this  
22 subsection. In each case, the information required shall be  
23 itemized so as to disclose clearly the brand style of the product.

1 The reports shall be provided separately with respect to each of the  
2 facilities operated by the wholesaler ~~and distributor~~ and shall  
3 include:

4 1. The quantity of cigarette packages that were distributed or  
5 shipped to another ~~distributor~~ wholesaler or to a retailer within  
6 the borders of Oklahoma during the reporting period and the name and  
7 address of each person to whom those products were ultimately  
8 distributed or shipped;

9 2. The quantity of cigarette packages that were distributed or  
10 shipped to another facility of the same ~~distributor~~ wholesaler  
11 within the borders of Oklahoma during the reporting period; and

12 3. The quantity of cigarette packages that were distributed or  
13 shipped within the borders of Oklahoma to Indian tribal entities or  
14 instrumentalities of the federal government during the reporting  
15 period and the name and address of each person to whom those  
16 products were distributed or shipped.

17 C. Manufacturers shall submit periodic reports containing the  
18 information required by this subsection. In each case, the  
19 information required shall be itemized so as to disclose clearly the  
20 brand style of the product. The reports shall be provided  
21 separately with respect to each of the facilities operated by the  
22 manufacturer and shall include:

1        1. The quantity of cigarette packages that were distributed or  
2 shipped to another manufacturer or to a ~~distributor~~ wholesaler  
3 within the borders of Oklahoma during the reporting period and the  
4 name and address of each person to whom those products were  
5 distributed or shipped;

6        2. The quantity of cigarette packages that were distributed or  
7 shipped to another facility of the same manufacturer within the  
8 borders of Oklahoma during the reporting period; and

9        3. The quantity of cigarette packages that were distributed or  
10 shipped within the borders of Oklahoma to instrumentalities of the  
11 federal government during the reporting period and the name and  
12 address of each person to whom those products were distributed or  
13 shipped.

14        D. The Tax Commission shall establish the reporting period,  
15 which shall be no longer than three (3) calendar months and no  
16 shorter than one (1) calendar month. Reports shall be submitted  
17 electronically as prescribed by the Tax Commission.

18        E. ~~Each distributor shall maintain copies of invoices or~~  
19 ~~equivalent documentation for each of its facilities for every~~  
20 ~~transaction in which the distributor is the seller, purchaser,~~  
21 ~~consignor, consignee, or recipient of cigarettes. The invoices or~~  
22 ~~documentation shall show the name, address, phone number and~~  
23 ~~wholesale license number of the consignor, seller, purchaser, or~~

1 ~~consignee, and the quantity by brand style of the cigarettes~~  
2 ~~involved in the transaction.~~

3 ~~F.~~ Each retailer shall maintain copies of invoices or  
4 equivalent documentation for every transaction in which the retailer  
5 receives or purchases cigarettes at each of its facilities. The  
6 invoices or documentation shall show the name and address of the  
7 ~~distributor~~ wholesaler from whom, ~~or the address of another facility~~  
8 ~~of the same retailer from which,~~ the cigarettes were received, the  
9 quantity of each brand style received in such transaction and the  
10 retail cigarette license number or sales tax license number.

11 ~~G.~~ F. Each manufacturer shall maintain copies of invoices or  
12 equivalent documentation for each of its facilities for every  
13 transaction in which the manufacturer is the seller, purchaser,  
14 consignor, consignee, or recipient of cigarettes. The invoices or  
15 documentation shall show the name and address of the consignor,  
16 seller, purchaser, or consignee, and the quantity by brand style of  
17 the cigarettes involved in the transaction.

18 ~~H.~~ G. Records required under subsections E through ~~G~~ F of this  
19 section shall be preserved on the premises described in the license  
20 in such a manner as to ensure permanency and accessibility for  
21 inspection at reasonable hours by authorized personnel of the  
22 Oklahoma Tax Commission. With the permission of the Tax Commission,  
23 manufacturers, ~~distributors~~ wholesalers, and retailers ~~with multiple~~

1 ~~places of business~~ may retain ~~centralized~~ records off premises, but  
2 shall transmit duplicates of the invoices or the equivalent  
3 documentation to each place of business within twenty-four (24)  
4 hours upon the request of the Tax Commission.

5 ~~F.~~ H. The records required by subsections E through ~~G~~ F of this  
6 section shall be retained for a period of three (3) years from the  
7 date of the transaction.

8 ~~J.~~ I. The Tax Commission, upon request, shall have access to  
9 reports and records required under ~~this act~~ the Cigarette and  
10 Tobacco Products Tax Codes. The Tax Commission at its sole  
11 discretion may share the records and reports required by such  
12 sections with law enforcement officials of the federal government,  
13 other states, or international authorities and shall upon request  
14 share the records and reports with state and local law enforcement  
15 officials.

16 SECTION 14. AMENDATORY 68 O.S. 2001, Section 315, is  
17 amended to read as follows:

18 Section 315. For the purpose of enabling the Oklahoma Tax  
19 Commission to determine the tax liability of a ~~distributor,~~  
20 ~~wholesale dealer, retail dealer~~ wholesaler, retailer, distributing  
21 agent or any other person dealing in cigarettes, or to determine  
22 whether a tax liability has been incurred, it shall have the right  
23 to inspect any premises where cigarettes are manufactured, produced,

1 made, stored, transported, sold, or offered for sale or exchange,  
2 and to examine all of the records required herein to be kept or any  
3 other records that may be kept incident to the conduct of the  
4 cigarette business of such ~~distributor, wholesale dealer, retail~~  
5 ~~dealer~~ wholesaler, retailer, distributing agent, or any other person  
6 dealing in cigarettes. The authorized agent of the ~~Oklahoma~~ Tax  
7 Commission shall also have the right, as an incident, to determine  
8 the said tax liability, or whether a tax liability has been  
9 incurred, to examine all stocks of cigarette stamps, and for the  
10 foregoing purpose such authorized agent shall also have the right to  
11 remain upon the premises for such length of time as may be necessary  
12 to fully determine such tax liability, or whether a tax liability  
13 has been incurred; and it shall be unlawful for any of the foregoing  
14 persons to fail to produce upon demand by the Tax Commission, or any  
15 of its authorized agents, any records ~~herein~~ required to be kept  
16 pursuant to the provisions of the Cigarette and Tobacco Products Tax  
17 Codes, or to hinder or prevent in any manner the inspection of said  
18 records, or the examination of said premises.

19 SECTION 15. AMENDATORY 68 O.S. 2001, Section 316, as  
20 amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2005,  
21 Section 316), is amended to read as follows:

22 Section 316. A. Any person, other than a consumer, who shall:

- 1        1. Sell, offer for sale or present as a prize or gift  
2 cigarettes without a stamp being then and there affixed to each  
3 individual package;
- 4        2. Sell cigarettes in quantities less than an individual  
5 package;
- 6        3. Knowingly consume, use or smoke any cigarettes upon which a  
7 tax is required to be paid without a stamp being affixed upon each  
8 individual package;
- 9        4. Knowingly cancel or mutilate any stamp affixed to any  
10 individual package of cigarettes for the purpose of concealing any  
11 violation of ~~Section 301 et seq. of this title~~ the Cigarette and  
12 Tobacco Products Tax Codes or with any other fraudulent intent;
- 13        5. Use any artful device or deceptive practice to conceal any  
14 violation of ~~Section 301 et seq. of this title~~ the Cigarette and  
15 Tobacco Products Tax Codes;
- 16        6. Refuse to surrender to the Oklahoma Tax Commission upon  
17 demand any cigarettes possessed in violation of any provision of  
18 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
19 Tax Codes; or
- 20        7. Make a first sale of cigarettes without a stamp being then  
21 and there affixed to each individual package;  
22 shall be guilty of a misdemeanor, and upon conviction thereof shall  
23 be fined not more than ~~Two Hundred Dollars (\$200.00)~~ Ten Thousand

1 Dollars (\$10,000.00) for the first offense and not more than Twenty-  
2 five Thousand Dollars (\$25,000.00) for the second offense, where  
3 specific penalties are not otherwise provided.

4 B. Any consumer, who shall:

5 1. Sell, offer for sale or present as a prize or gift  
6 cigarettes without a stamp being then and there affixed to each  
7 individual package;

8 2. Sell cigarettes in quantities less than an individual  
9 package;

10 3. Knowingly consume, use or smoke any cigarettes upon which a  
11 tax is required to be paid without a stamp being affixed upon each  
12 individual package;

13 4. Knowingly cancel or mutilate any stamp affixed to any  
14 individual package of cigarettes for the purpose of concealing any  
15 violation of the Cigarette and Tobacco Products Tax Codes or with  
16 any other fraudulent intent;

17 5. Use any artful device or deceptive practice to conceal any  
18 violation of the Cigarette and Tobacco Products Tax Codes;

19 6. Refuse to surrender to the Tax Commission upon demand any  
20 cigarettes possessed in violation of any provision of Section 301 et  
21 seq. of this title; or

22 7. Make a first sale of cigarettes without a stamp being then  
23 and there affixed to each individual package;

1 shall be fined not more than Two Hundred Dollars (\$200.00), where  
2 specific penalties are not otherwise provided.

3 C. Any ~~distributor, wholesale dealer, retail dealer~~ wholesaler,  
4 retailer, or distributing agent who shall intentionally:

5 1. Commit any of the acts specifically enumerated in subsection  
6 A of this section, where such acts are applicable to such person;

7 2. Sell any cigarettes upon which tax is required to be paid by  
8 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
9 Tax Codes without at the time of making such sale having a valid  
10 license;

11 3. Make a first sale of cigarettes without at the time of first  
12 sale having a license posted so as to be easily seen by the public;  
13 or

14 4. Fail to deliver an invoice required by law to a purchaser of  
15 cigarettes;

16 shall be guilty of a misdemeanor, and upon conviction thereof shall  
17 be punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~  
18 Ten Thousand Dollars (\$10,000.00) for the first offense, and not  
19 more than Twenty-five Thousand Dollars (\$25,000.00) for the second  
20 offense, where specific penalties are not otherwise provided.

21 ~~C.~~ D. Any distributing agent who shall:

1        1. Commit any of the acts specifically enumerated in  
2 subsections A and ~~B~~ C of this section where such provisions are  
3 applicable to such distributing agent; or

4        2. Store any unstamped cigarettes in the state or deliver or  
5 distribute any unstamped cigarettes within this state, without at  
6 the time of storage or delivery having a valid license posted so as  
7 to be easily seen by the public;  
8 shall be guilty of a misdemeanor, and upon conviction shall be  
9 punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~  
10 Ten Thousand Dollars (\$10,000.00) for the first offense, and not  
11 more than Twenty-five Thousand Dollars (\$25,000.00) for the second  
12 offense.

13        ~~D.~~ E. Any retailer violating the provisions of Section 305.1 of  
14 this title shall:

15        1. For a first offense, be punished by an administrative fine  
16 of not more than One Hundred Dollars (\$100.00);

17        2. For a second offense, be punished by an administrative fine  
18 of not more than One Thousand Dollars (\$1,000.00); and

19        3. For a third or subsequent offense, be punished by an  
20 administrative fine of not more than Five Thousand Dollars  
21 (\$5,000.00).

22        ~~E.~~ F. Any wholesaler, ~~jobber or warehouseman~~ violating the  
23 provisions of Section 305.1 of this title shall:

1        1. For a first offense, be punished by an administrative fine  
2 of not more than Five Thousand Dollars (\$5,000.00); and

3        2. For a second or subsequent offense, be punished by an  
4 administrative fine of not more than Twenty Thousand Dollars  
5 (\$20,000.00).

6        Administrative fines collected pursuant to the provisions of  
7 this subsection shall be deposited to the revolving fund created in  
8 Section 305.2 of this title.

9        ~~F.~~ G. The Tax Commission shall immediately revoke the license of  
10 a person punished for a violation pursuant to the provisions of  
11 paragraph 3 of subsection ~~D~~ E of this section or a person punished  
12 for a violation pursuant to the provisions of subsection ~~E~~ F of this  
13 section. A person whose license is so revoked shall not be eligible  
14 to receive another license pursuant to the provisions of ~~Section 301~~  
15 ~~et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes  
16 for a period of ten (10) years.

17        ~~G.~~ H. Whoever, with intent to defraud Oklahoma:

18        1. Fails to keep or make any record, return, report, or  
19 inventory, or keeps or makes any false or fraudulent record, return,  
20 report, or inventory, required by ~~Section 301 et seq. of this title~~  
21 the Cigarette and Tobacco Products Tax Codes or rules promulgated  
22 thereunder;

1           2. Refuses to pay any tax imposed by ~~Section 301 et seq.~~ of  
2 ~~this title~~ the Cigarette and Tobacco Products Tax Codes, or attempts  
3 in any manner to evade or defeat the tax or the payment thereof; or

4           3. Fails to comply with any requirement of ~~Section 301 et seq.~~  
5 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes;  
6 shall, for each such offense, be fined not more than Ten Thousand  
7 Dollars (\$10,000.00), or imprisoned not more than five (5) years, or  
8 both.

9           ~~H.~~ I. Whoever knowingly omits, neglects, or refuses to comply  
10 with any duty imposed upon the person by ~~Section 301 et seq.~~ of ~~this~~  
11 ~~title~~ the Cigarette and Tobacco Products Tax Codes, or to do, or  
12 cause to be done, any of the things required by ~~Section 301 et seq.~~  
13 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes, or does  
14 anything prohibited by ~~Section 301 et seq.~~ of ~~this title~~ the  
15 Cigarette and Tobacco Products Tax Codes, shall, in addition to any  
16 other penalty provided in ~~Section 301 et seq.~~ of ~~this title~~ the  
17 Cigarette and Tobacco Products Tax Codes, pay an administrative  
18 penalty of One Thousand Dollars (\$1,000.00).

19           ~~F.~~ J. Whoever fails to pay any tax imposed by ~~Section 301 et~~  
20 ~~seq.~~ of ~~this title~~ the Cigarette and Tobacco Products Tax Codes at  
21 the time prescribed by law or rules, shall, in addition to any other  
22 penalty provided in ~~Section 301 et seq.~~ of ~~this title~~ the Cigarette

1 and Tobacco Products Tax Codes, be liable to a penalty of five  
2 hundred percent (500%) of the tax due but unpaid.

3 ~~¶~~ K. 1. All cigarettes which are held for sale or distribution  
4 within the borders of Oklahoma, in violation of the requirements of  
5 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products  
6 Tax Codes, and the machinery used to manufacture counterfeit  
7 cigarettes shall be forfeited to Oklahoma. All cigarettes and  
8 machinery forfeited to Oklahoma under this paragraph shall be  
9 destroyed.

10 2. All fixtures, equipment, and all other materials and personal  
11 property on the premises of any distributor or retailer who, with  
12 intent to defraud the state, fails to keep or make any record,  
13 return, report, or inventory; keeps or makes any false or fraudulent  
14 record, return, report, or inventory required by ~~Section 301 et seq.~~  
15 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes; refuses  
16 to pay any tax imposed by ~~Section 301 et seq. of this title~~ the  
17 Cigarette and Tobacco Products Tax Codes; or attempts in any manner  
18 to evade or defeat the requirements of ~~Section 301 et seq. of this~~  
19 ~~title~~ the Cigarette and Tobacco Products Tax Codes shall be  
20 forfeited to Oklahoma.

21 ~~¶~~ L. Notwithstanding any other provision of law, the sale or  
22 possession for sale of counterfeit cigarettes, or the sale or  
23 possession for sale of counterfeit cigarettes by a manufacturer,

1 ~~distributor,~~ or retailer shall result in the seizure of the product  
2 and related machinery by the Tax Commission or any law enforcement  
3 agency and shall be punishable as follows:

4 1. A first violation with a total quantity of less than two  
5 cartons of cigarettes or the equivalent amount of other cigarettes  
6 shall be punishable by a fine not to exceed ~~One Thousand Dollars~~  
7 ~~(\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) or imprisonment not to  
8 exceed five (5) years, or both the fine and imprisonment;

9 2. A subsequent violation with a total quantity of less than two  
10 cartons of cigarettes, or the equivalent amount of other cigarettes  
11 shall be punishable by a fine not to exceed ~~Five Thousand Dollars~~  
12 ~~(\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or  
13 imprisonment not to exceed five (5) years, or both the fine and the  
14 imprisonment, and shall also result in the revocation by the Tax  
15 Commission of the manufacturer, ~~distributor~~ wholesaler, or retailer  
16 license;

17 3. A first violation with a total quantity of more than two  
18 cartons of cigarettes, or the equivalent amount of other cigarettes,  
19 shall be punishable by a fine not to exceed ~~Two Thousand Dollars~~  
20 ~~(\$2,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or  
21 imprisonment not to exceed five (5) years, or both the fine and  
22 imprisonment; and

1           4. A subsequent violation with a quantity of two cartons of  
2 cigarettes or more, or the equivalent amount of other cigarettes  
3 shall be punishable by a fine not to exceed Fifty Thousand Dollars  
4 (\$50,000.00) or imprisonment not to exceed five (5) years, or both  
5 the fine and imprisonment, and shall also result in the revocation  
6 by the Tax Commission of the manufacturer, ~~distributor~~ wholesaler,  
7 or retailer license.

8           For the purposes of this section, "counterfeit cigarettes"  
9 includes cigarettes that have false manufacturing labels or tobacco  
10 product packs without tax stamps or the applicable tax stamp or with  
11 counterfeit tax stamps or a combination thereof. Any counterfeit  
12 cigarette seized by the Tax Commission shall be destroyed.

13           M. The Tax Commission shall immediately revoke the license of a  
14 person punished for a violation pursuant to the provisions of  
15 subsection H of this section. A person whose license is so revoked  
16 shall not be eligible to receive another license for a period of  
17 five (5) years.

18           SECTION 16.           AMENDATORY           Section 6, Chapter 475, O.S.L.  
19 2003 (68 O.S. Supp. 2005, Section 317.1), is amended to read as  
20 follows:

21           Section 317.1 ~~A.~~ No person shall make a delivery sale of  
22 cigarettes or tobacco products to ~~any individual who is under the~~  
23 ~~legal minimum purchase age~~ a consumer in this state.

1 ~~B. Each person taking a delivery sale order shall comply with:~~

2 ~~1. The age verification requirements set forth in Section 7 of~~  
3 ~~this act;~~

4 ~~2. The disclosure requirements set forth in Section 8 of this~~  
5 ~~act;~~

6 ~~3. The shipping requirements set forth in Section 9 of this~~  
7 ~~act;~~

8 ~~4. The registration and reporting requirements set forth in~~  
9 ~~Section 10 of this act;~~

10 ~~5. The tax collection requirements set forth in Section 11 of~~  
11 ~~this act; and~~

12 ~~6. All other laws of Oklahoma generally applicable to sales of~~  
13 ~~cigarettes that occur entirely within Oklahoma, including, but not~~  
14 ~~limited to, those laws imposing:~~

15 ~~a. excise taxes,~~

16 ~~b. sales taxes,~~

17 ~~c. licensing and tax stamping requirements, and~~

18 ~~d. escrow or other payment obligations.~~

19 SECTION 17. AMENDATORY 68 O.S. 2001, Section 320, is  
20 amended to read as follows:

21 Section 320. A. Every person making application for a  
22 distributing agent's license under ~~this article or the following~~  
23 ~~article containing the tobacco Products Tax Code~~ the Cigarette and

1 Tobacco Products Tax Codes shall, before being issued such license  
2 and as a condition of carrying on such business, file with the Tax  
3 Commission a surety or collateral or cash bond in the amount of One  
4 Thousand Dollars (\$1,000.00) or an amount equal to three (3) months'  
5 estimated tax liability of the distributing agent, whichever is  
6 greater, payable to the State of Oklahoma, and conditioned upon  
7 compliance with the provisions of ~~this article or the following~~  
8 ~~article of this Code~~ the Cigarette and Tobacco Products Tax Codes,  
9 and the rules and regulations of the Oklahoma Tax Commission.

10 B. Every person making application for a wholesaler's ~~or~~  
11 ~~jobber's~~ license under ~~this article~~ the Cigarette and Tobacco  
12 Products Tax Codes shall, before being issued such license and as a  
13 condition of carrying on such business, file with the Tax Commission  
14 a:

15 1. A surety or collateral or cash bond in the amount of One  
16 Thousand Dollars (\$1,000.00) or an amount equal to three (3) months'  
17 estimated monthly tax liability of the wholesaler, whichever is  
18 greater, payable to the State of Oklahoma, and conditioned upon  
19 compliance with the provisions of ~~this article~~ the Cigarette and  
20 Tobacco Products Tax Codes, and the rules and regulations of the  
21 Oklahoma Tax Commission; and

22 2. A financial statement listing assets and liabilities and  
23 such other information as the Tax Commission may prescribe and a

1 general release that the information may be verified with banks and  
2 other financial institutions; provided, the financial statement  
3 shall be confidential and shall not be opened to public inspection.

4 C. 1. If the Commission reasonably determines that the amount  
5 of the existing bond is insufficient to ensure payment to the state  
6 of the tax and any penalty and interest for which the licensee is or  
7 may become liable, the licensee shall, upon written demand of the  
8 Tax Commission, file a new bond or increase the cash deposit. The  
9 Tax Commission shall allow the licensee at least fifteen (15) days  
10 to secure the increased bond or cash deposit.

11 2. If the new bond or cash deposit required under this section  
12 is unsatisfactory, the Tax Commission shall cancel the license.

13 D. 1. Sixty (60) days after making a written request for  
14 release to the Tax Commission, the surety of a bond furnished by a  
15 licensee shall be released from any liability to the state accruing  
16 on the bond after the sixty-day period. The release does not affect  
17 any liability accruing before the expiration of the sixty-day  
18 period.

19 2. The Tax Commission shall promptly notify the licensee  
20 furnishing the bond that a release has been requested. Unless the  
21 licensee obtains a new bond that meets the requirements of this act  
22 and files with the Tax Commission the new bond within the sixty-day  
23 period, the Tax Commission shall cancel the license.

1       3. Sixty (60) days after making a written request for release  
2 to the Tax Commission, the cash deposit provided by a licensee shall  
3 be canceled as security for any obligation accruing after the  
4 expiration of the sixty-day period. However, the Tax Commission may  
5 retain all or part of the cash deposit for up to three (3) years and  
6 one (1) day as security for any obligations accruing before the  
7 effective date of the cancellation. Any part of the deposit not  
8 retained by the Tax Commission shall be released to the licensee.  
9 Before the expiration of the sixty-day period, the licensee shall  
10 provide the Tax Commission with a bond that satisfies the  
11 requirements of this act, or the Tax Commission shall cancel the  
12 license.

13       4. Any licensee who has filed a bond or other security is  
14 entitled, on request, to have the Tax Commission return, refund, or  
15 release the bond or security if, in the judgment of the Tax  
16 Commission, the licensee has continuously complied with the  
17 provisions of the Cigarette and Tobacco Products Tax Codes for the  
18 previous three (3) consecutive years. However, if the Tax  
19 Commission determines that the revenues of the state would be  
20 jeopardized by the return, refund or release of bond or security,  
21 the Tax Commission may elect to retain the bond or security, or  
22 having released such, may reimpose a requirement for bond or  
23 security to protect the revenues of this state. The decision of the

1 Tax Commission to not release a bond or security may be reviewed,  
2 after application by the licensee, pursuant to the Administrative  
3 Procedures Act.

4 E. In the event any applicant for a license applies for more  
5 than one license pursuant to the Cigarette and Tobacco Products Tax  
6 Codes, the applicant shall not be required to post a bond for each  
7 license, but shall be required to post the bond for the license  
8 which requires the greatest amount of bond.

9 F. Each distributing agent or wholesaler shall not be subject  
10 to a bond in excess of One Thousand Dollars (\$1,000.00) under the  
11 provisions of subsection A or B of this section if the distributing  
12 agent or wholesaler is in good standing, holds a valid license and  
13 is bonded according to the law prior to the effective date of this  
14 act. For the purposes of this subsection, the term "good standing"  
15 means that the distributing agent or wholesaler has made timely  
16 remittances to the Tax Commission under its license for one (1) year  
17 prior to the date of application.

18 SECTION 18. AMENDATORY 68 O.S. 2001, Section 324, is  
19 amended to read as follows:

20 Section 324. All manufacturers, wholesalers, ~~jobbers,~~ retailers  
21 or other persons selling or distributing ~~such~~ cigarettes are hereby  
22 required to comply with the provisions of the ~~three preceding~~  
23 ~~sections~~ Cigarette and Tobacco Products Tax Codes, and the rules and

1 regulations of the Oklahoma Tax Commission as to such sales or  
2 distributions, and failure or refusal to so comply shall constitute  
3 grounds for revocation of any license issued to such manufacturer,  
4 wholesaler, ~~jobber~~, retailer or other person, by the ~~Oklahoma~~ Tax  
5 Commission.

6 SECTION 19. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 326 of Title 68, unless there is  
8 created a duplication in numbering, reads as follows:

9 On or before November 1 of each year, after the year of the  
10 effective date of this act, the Oklahoma Tax Commission shall file a  
11 report with the Governor, President Pro Tempore of the Senate and  
12 Speaker of the House of Representatives. The report shall contain a  
13 description of the progress made during the past year to stop the  
14 flow of contraband, counterfeit and gray-market cigarettes and  
15 tobacco products into and within the state. It shall also provide a  
16 report of all revenue received from all enforcement efforts relating  
17 to the taxation of cigarette and tobacco products.

18 SECTION 20. AMENDATORY 68 O.S. 2001, Section 346, as  
19 amended by Section 8, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2005,  
20 Section 346), is amended to read as follows:

21 Section 346. A. The Legislature finds that:

1           1. Federal law recognizes the right of Indian tribes or nations  
2 to engage in sales of cigarettes and tobacco products to their  
3 members free of state taxation;

4           2. The doctrine of tribal sovereign immunity prohibits the  
5 State of Oklahoma from bringing a lawsuit against an Indian tribe or  
6 nation to compel the tribe or nation to collect state taxes on sales  
7 made in Indian country to either members or nonmembers of the tribe  
8 or nation without a waiver of immunity by the tribe or nation or  
9 congressional abrogation of the doctrine; and

10          3. The Supreme Court of the United States, in "Oklahoma Tax  
11 Commission v. Citizen Band Pottawatomie Indian Tribe of Oklahoma",  
12 suggested that a state may provide other methods of collection of  
13 state taxes on sales of cigarettes and tobacco products made by  
14 Indian tribes or nations to persons who are not members of the tribe  
15 or nation, such as entering into mutually satisfactory agreements  
16 with Indian tribes or nations.

17          B. It is the intent of the Legislature to establish a system of  
18 state taxation of sales of cigarettes and tobacco products made by  
19 federally recognized Indian tribes or nations or their licensees,  
20 other than such tribes or nations which have entered into a compact  
21 with the State of Oklahoma pursuant to the provisions of subsection  
22 C of this section, under which the rate of payments in lieu of state  
23 taxes is less than the rate of state taxes on other sales of

1 cigarettes and tobacco products in order to allow such tribes or  
2 nations or their licensees to make sales of cigarettes and tobacco  
3 products to tribal members free of state taxation.

4 C. The Governor is authorized by this enactment to enter into  
5 cigarette and tobacco products tax compacts on behalf of the State  
6 of Oklahoma with the federally recognized Indian tribes or nations  
7 of this state. The compacts shall set forth the terms of agreement  
8 between the sovereign parties regulating sale of cigarettes and  
9 tobacco products by the tribes or nations or their licensees in  
10 Indian country. All sales in Indian country by those compacting  
11 tribes or nations and their licensees shall be exempt from the taxes  
12 levied pursuant to the provisions of Section 301 et seq., Section  
13 401 et seq. and Section 1350 et seq. of Title 68 of the Oklahoma  
14 Statutes and Sections 349 and 425 of this title, subject to the  
15 following terms and conditions:

16 1. A payment in lieu of state sales and excise taxes, as  
17 provided for in said compact, shall be paid to the State of Oklahoma  
18 by the tribes or nations, their licensees or their wholesalers upon  
19 purchase of all cigarettes and tobacco products intended for resale  
20 in Indian country by the tribes or nations or their licensees;

21 2. All cigarettes and tobacco products sold or held for sale to  
22 the public, without distinction between member and nonmember sales,  
23 shall bear a payment in lieu of tax stamp evidencing that payment in

1 lieu of state taxes has been paid to the state. State and tribal  
2 officials may provide for use of a single joint stamp evidencing  
3 payment of both the payment in lieu of tax as specified in a compact  
4 pursuant to the provisions of this section and any tax levied by a  
5 tribe or nation;

6 3. In the event that a compacting tribe or nation fails to  
7 comply with all terms and conditions of the compact including, but  
8 not limited to, requirements to include all state taxes required by  
9 the terms of the compact to be collected by the tribe or nation in  
10 the price of its cigarettes or tobacco products, the tribe or nation  
11 shall not be eligible to receive any payment due from the state  
12 pursuant to the terms of the compact for the tax-reporting period  
13 during which the noncompliance occurred;

14 4. Records of all sales of cigarettes and tobacco products to  
15 the tribes or nations and their licensees shall be kept by all  
16 wholesalers doing business in the State of Oklahoma and shall be  
17 made available for inspection by state officials on a timely basis.  
18 Copies of all invoices of wholesale sales of cigarettes or tobacco  
19 products to tribally owned or licensed retail stores shall be  
20 forwarded by the wholesaler to the Oklahoma Tax Commission; and

21 5. For purposes of a compact pursuant to the provisions of this  
22 section, the term "tribal licensee" shall only extend to:

23 a. members of the tribe or nation, and

1           b.    business entities in which the tribe or nation or  
2                   tribal members have a majority ownership interest.

3           D.    In addition to any other authority granted by law, the Tax  
4 Commission shall regularly conduct an audit of wholesalers,  
5 ~~distributors, jobbers and warehousemen~~ selling cigarettes or tobacco  
6 products to a federally recognized Indian tribe or nation or a  
7 tribally owned or licensed store to determine if the correct amount  
8 of tax payable ~~under this act~~ the Cigarette and Tobacco Products Tax  
9 Codes has been collected and to determine compliance with any and  
10 all compacts.

11           SECTION 21.        AMENDATORY        68 O.S. 2001, Section 347, is  
12 amended to read as follows:

13           Section 347.   The provisions of ~~Sections 3 through 6~~ Section 349  
14 of this act shall not apply to a federally recognized Indian tribe  
15 or nation which has entered into a compact with the State of  
16 Oklahoma pursuant to the provisions of subsection C of Section ~~1 of~~  
17 ~~this act~~ 346 of this title or to a licensee of such a tribe or  
18 nation during the period that such compact is effective.

19           SECTION 22.        AMENDATORY        68 O.S. 2001, Section 348, is  
20 amended to read as follows:

21           Section 348.   As used in ~~Sections 346 through 352 of this title~~  
22 the Cigarette and Tobacco Products Tax Codes:

1           1. "Tribally owned or licensed store" means a store or place of  
2 business which is owned and operated by a federally recognized  
3 Indian tribe or nation, other than a federally recognized Indian  
4 tribe or nation which has entered into a compact with the State of  
5 Oklahoma pursuant to the provisions of subsection C of Section 346  
6 of this title during the period that such compact is effective, on  
7 Indian country within the territorial jurisdiction of that tribe or  
8 nation or which is duly licensed by such tribe or nation pursuant to  
9 tribal laws or ordinances to conduct business located on Indian  
10 country within the territorial jurisdiction of that tribe or nation;

11           2. "Federally recognized Indian tribe or nation" means an  
12 Indian tribal entity which is recognized by the United States Bureau  
13 of Indian Affairs as having a special relationship with the United  
14 States;

15           3. "Indian country" means:

16           a. land held in trust by the United States of America for  
17 the benefit of a federally recognized Indian tribe or  
18 nation,

19           b. all land within the limits of any Indian reservation  
20 under the jurisdiction of the United States  
21 Government, notwithstanding the issuance of any  
22 patent, including rights-of-way running through the  
23 reservation,

1           c.    all dependent Indian communities within the borders of  
2                   the United States whether within the original or  
3                   subsequently acquired territory thereof, and whether  
4                   within or without the limits of a state, and  
5           d.    all Indian allotments, the Indian titles to which have  
6                   not been extinguished, including individual allotments  
7                   held in trust by the United States or allotments owned  
8                   in fee by individual Indians subject to federal law  
9                   restrictions regarding disposition of said allotments  
10                  and including rights-of-way running through the same;

11           4.    "Member of the tribe" or "tribal member" means a person who  
12                  is duly enrolled within the membership of the federally recognized  
13                  Indian tribe or nation which owns or licenses the store;

14           5.    "Nonmember of the tribe" or "nontribal member" means, with  
15                  respect to a particular Indian tribe or nation, any person who is  
16                  not a duly enrolled member of that tribe or nation, and shall  
17                  include any person who is a member of another Indian tribe or nation  
18                  but not a member of that tribe or nation;

19           6.    "Unstamped cigarettes" means packages of cigarettes which  
20                  bear no evidence of ~~a~~ the tax stamp required by state law and  
21                  includes cigarettes bearing an improper tax stamp applicable to the  
22                  retail establishment at which the cigarette is sold, regardless of

1 the identity of the establishment which the cigarette has been sold,  
2 shipped, consigned or delivered;

3 7. "Contraband cigarettes" means unstamped cigarettes which are  
4 required by the provisions of ~~Sections 348 through 351 of this title~~  
5 ~~or Section 301 et seq. of this title~~ the Cigarette and Tobacco  
6 Products Tax Codes to bear stamps and which are in the possession,  
7 custody or control of any person, for the purpose of being consumed,  
8 sold, offered for sale or consumption or transported to any person  
9 in this state other than a wholesaler licensed under Section 304 of  
10 this title; provided, contraband cigarettes shall not include  
11 unstamped cigarettes sold to veterans' hospitals, to state-operated  
12 domiciliary homes for veterans or to the United States for sale or  
13 distribution by said entities in accordance with Sections 321  
14 through 324 of this title;

15 8. "Stamped cigarettes" means packages of cigarettes which bear  
16 ~~a~~ the proper tax stamp required by state law;

17 9. "Commission" means the Oklahoma Tax Commission; and

18 10. "Person" shall include any individual, company,  
19 partnership, joint venture, joint agreement, association (mutual or  
20 otherwise), limited liability company, corporation, trust, estate,  
21 business trust receiver or trustee appointed by any state or federal  
22 court, syndicates or any combination acting as a unit, in the plural  
23 or singular number.

1 SECTION 23. AMENDATORY 68 O.S. 2001, Section 350, is  
2 amended to read as follows:

3 Section 350. A. Every wholesaler, ~~jobber or warehouseman~~ doing  
4 business within this state and required to secure a license as  
5 provided in Section 304 of Title 68 of the Oklahoma Statutes may  
6 sell cigarettes to tribally owned or licensed stores in this state.  
7 Provided, wholesalers shall only sell cigarettes or tobacco products  
8 to tribally owned or licensed stores that are on the list of  
9 tribally owned and licensed stores maintained and supplied by the  
10 Oklahoma Tax Commission. It shall be the duty of the wholesaler, ~~7~~  
11 ~~jobber or warehouseman~~ to affix the applicable tax stamp required by  
12 ~~Section 4 of this act~~ the Cigarette and Tobacco Products Tax Codes  
13 to cigarette inventory sold to a tribally owned or licensed store.

14 B. Tribally owned or licensed stores may only purchase,  
15 receive, stock, possess, sell or distribute stamped cigarettes.

16 SECTION 24. AMENDATORY 68 O.S. 2001, Section 350.1, is  
17 amended to read as follows:

18 Section 350.1 If a wholesaler, ~~jobber or warehouseman~~ timely  
19 accepts documentation ~~which shall require identification by drivers~~  
20 ~~license and social security number~~ as prescribed by the Oklahoma Tax  
21 Commission from a person claiming that the cigarettes will be sold  
22 at a tribally owned or licensed store, the wholesaler, ~~jobber or~~  
23 ~~warehouseman~~ shall be relieved of any liability for any additional

1 tax due or required to be collected should it later be determined  
2 that the cigarettes were not purchased for sale at a tribally owned  
3 or licensed store.

4 SECTION 25. AMENDATORY 68 O.S. 2001, Section 351, is  
5 amended to read as follows:

6 Section 351. A. All unstamped cigarettes sold or shipped to  
7 tribally owned or licensed stores in this state by wholesalers,  
8 ~~jobbers or warehousemen~~ not licensed by this state pursuant to the  
9 provisions of Section 304 of ~~Title 68 of the Oklahoma Statutes~~ this  
10 title for the purpose of selling or consuming unstamped cigarettes  
11 in this state in violation of ~~this act~~ the Cigarette and Tobacco  
12 Products Tax Codes shall be subject to seizure of the shipments and  
13 forfeiture of the inventory pursuant to the provisions of Section  
14 305 of ~~Title 68 of the Oklahoma Statutes~~ this title.

15 B. Any peace officer of this state, including, but not limited  
16 to, officers of the Department of Public Safety or the Oklahoma  
17 State Bureau of Investigation, any sheriff, any salaried deputy  
18 sheriff or any municipal police officer is authorized to stop any  
19 vehicle upon any road or highway of this state in order to inspect  
20 the bill of lading or to take such action as may be necessary to  
21 determine if unstamped cigarettes are being sold or shipped in  
22 violation of the provisions of this section. Such officers shall

1 also have the duty to cooperate with the Oklahoma Tax Commission to  
2 enforce the provisions of this act.

3 SECTION 26. AMENDATORY 68 O.S. 2001, Section 401, is  
4 amended to read as follows:

5 Section 401. ~~For the purpose of this article:~~

6 ~~(a) The word "person" shall mean any individual, company,~~  
7 ~~limited liability company, corporation, partnership, association,~~  
8 ~~joint adventure, estate, trust, or any other group, or combination~~  
9 ~~acting as a unit, and the plural as well as the singular, unless the~~  
10 ~~intention to give a more limited meaning is disclosed by the~~  
11 ~~context.~~

12 ~~(b) The term "Tax Commission" shall mean the Oklahoma Tax~~  
13 ~~Commission.~~

14 ~~(c) The word "wholesaler" shall include dealers whose principal~~  
15 ~~business is that of a wholesale dealer or jobber, and who is known~~  
16 ~~to the trade as such, who shall sell any cigars or tobacco products~~  
17 ~~to licensed retail dealers only for the purpose of resale, or giving~~  
18 ~~them away, or exposing the same where they may be taken or~~  
19 ~~purchased, or otherwise acquired by the retailer.~~

20 ~~(d) The word "retailer" shall include every dealer, other than~~  
21 ~~a wholesale dealer as defined above, whose principal business is~~  
22 ~~that of selling merchandise at retail, who shall sell, or offer for~~  
23 ~~sale, cigars or tobacco products, irrespective of quantity, number~~

1 ~~of sales, giving the same away or exposing the same where they may~~  
2 ~~be taken, or purchased, or otherwise acquired by the consumer.~~

3 ~~(e) The word "consumer" shall mean a person who comes into~~  
4 ~~possession of tobacco for the purpose of consuming it, giving it~~  
5 ~~away, or disposing of it in any way by sale, barter or exchange.~~

6 ~~(f) The words "first sale" shall mean and include the first~~  
7 ~~sale, or distribution, of cigars or tobacco products in intrastate~~  
8 ~~commerce, or the first use or consumption of cigars, or tobacco~~  
9 ~~products within this state.~~

10 ~~(g) The words "tobacco~~ For purposes of the Cigarette and  
11 Tobacco Products Tax Codes:

12 1. "Tobacco products" shall mean any cigars, cheroots, stogies,  
13 smoking tobacco (including granulated, plug cut, crimp cut, ready  
14 rubbed and any other kinds and forms of tobacco suitable for smoking  
15 in a pipe or cigarette), chewing tobacco (including cavendish,  
16 twist, plug, scrap and any other kinds and forms of tobacco suitable  
17 for chewing), however prepared; and shall include any other articles  
18 or products made of tobacco or any substitute therefor.

19 ~~(h) The term "distributing agent" shall mean and include every~~  
20 ~~person in this state who acts as an agent of any person outside the~~  
21 ~~state by receiving cigars and tobacco products in interstate~~  
22 ~~commerce and storing such items subject to distribution or delivery,~~  
23 ~~upon order from said person outside the state, to distributors,~~

1 ~~wholesale dealers and retail dealers, or to consumers. The term~~  
2 ~~"distributing agent" shall also mean and include any person who~~  
3 ~~solicits or takes orders for cigars and tobacco products to be~~  
4 ~~shipped in interstate commerce to a person in this state by a person~~  
5 ~~residing outside of Oklahoma, the tax not having been paid on such~~  
6 ~~cigars and tobacco products.~~

7 ~~(i) The term "stamp" shall mean the stamp or stamps by use of~~  
8 ~~which:~~

9 ~~1. The tax levied pursuant to the provisions of Section 401 et~~  
10 ~~seq. of this title is paid;~~

11 ~~2. The tax levied pursuant to the provisions of Section 426 of~~  
12 ~~this title is paid; or~~

13 ~~3. The payment in lieu of taxes authorized pursuant to a~~  
14 ~~compact entered into by the State of Oklahoma and a federally~~  
15 ~~recognized Indian tribe or nation pursuant to the provisions of~~  
16 ~~subsection C of Section 346 of this title is paid.~~

17 ~~(j) The term "drop shipment" shall mean and include any~~  
18 ~~delivery of cigars or tobacco products received by any person within~~  
19 ~~the state when payment for such cigars or tobacco products is made~~  
20 ~~to the shipper or seller by or through a person other than the~~  
21 ~~consignee.~~

22 ~~(k) The term "cigars"~~

1        2. "Cigars" shall include any roll of tobacco for smoking,  
2        irrespective of size or shape and irrespective of the tobacco being  
3        flavored, adulterated or mixed with any other ingredients, where  
4        such roll has a wrapper made chiefly of tobacco.

5        ~~(1) The word "dealer"~~

6        3. "Dealer" shall include every person, firm, corporation, or  
7        association of persons, who manufactures cigars or tobacco products  
8        for distribution, sale, use or consumption in the State of Oklahoma.  
9        The word "dealer" is also further defined to mean any person, firm,  
10       corporation or association of persons, who imports cigars or tobacco  
11       products from any state or foreign country, for distribution, sale,  
12       use or consumption in the State of Oklahoma.

13       SECTION 27.        AMENDATORY        68 O.S. 2001, Section 410, is  
14       amended to read as follows:

15       Section 410. The Tax Commission shall administer and enforce  
16       all provisions of ~~this article~~ the Cigarette and Tobacco Products  
17       Tax Codes. It shall have the power to enter upon the premises of  
18       any taxpayer and to examine, or cause to be examined by an agent or  
19       representative designated by it for such purpose, any books,  
20       invoices, papers, records or memoranda bearing upon the amount of  
21       taxes payable, and to secure other information directly concerned in  
22       the enforcement of ~~this article~~ the Cigarette and Tobacco Products  
23       Tax Codes.

1 SECTION 28. AMENDATORY 68 O.S. 2001, Section 412, is  
2 amended to read as follows:

3 Section 412. (a) Every wholesaler, ~~jobber~~, retailer or  
4 consumer, who purchases or allows to come into his or her possession  
5 any unstamped merchandise coming under the scope of this article,  
6 shall file with the Oklahoma Tax Commission a surety or collateral  
7 or cash bond in such amount as the Tax Commission may prescribe but  
8 not less than Five Hundred Dollars (\$500.00), payable to the State  
9 of Oklahoma and conditioned upon compliance with the provisions of  
10 ~~this article~~ the Cigarette and Tobacco Products Tax Codes and the  
11 rules ~~and regulations~~ of the Tax Commission.

12 (b) Any consumer who purchases or brings into this state  
13 unstamped cigars or tobacco products whereon the tax would be more  
14 than twenty-five cents (\$0.25) is subject to the tax thereon. Upon  
15 failure to pay the tax levied in this article, the consumer shall be  
16 subject to a fine of not more than Five Hundred Dollars (\$500.00) or  
17 not less than Twenty-five Dollars (\$25.00).

18 SECTION 29. AMENDATORY 68 O.S. 2001, Section 413, is  
19 amended to read as follows:

20 Section 413. (a) The right of a ~~common~~ carrier in this state  
21 to carry unstamped cigars and tobacco products shall not be affected  
22 hereby; provided, that ~~common~~ carriers delivering untaxed tobacco  
23 products to any person in this state for the purpose of selling or

1 consuming untaxed tobacco products in this state in violation of  
2 this article shall be subject to seizure of the shipments and  
3 forfeiture of the inventory pursuant to the provisions of Section  
4 417 of this title. Provided further, that should any such carrier  
5 sell any cigars and tobacco products in this state, such sale shall  
6 be subject to the stamp tax and other provisions of this article and  
7 to the rules and regulations of the Tax Commission. The ~~common~~  
8 carrier transporting tobacco products and cigars to a point within  
9 this state, or a bonded warehouseman or bailee having in its  
10 possession tobacco products and cigars, shall transmit to the Tax  
11 Commission a statement of such consignment of tobacco products and  
12 cigars, showing the date, point of origin, point of delivery, and to  
13 whom delivered. All ~~common~~ carriers or bailees or warehousemen  
14 shall permit an examination by the Tax Commission, or its agents or  
15 legally authorized representatives, of their records relating to the  
16 shipment or receipt of tobacco products and cigars. Any person who  
17 fails or refuses to transmit to the Tax Commission the aforesaid  
18 statement, or who refuses to permit the examination of his or her  
19 records by the Tax Commission or its legally authorized agents or  
20 representatives, shall be guilty of a misdemeanor and shall be  
21 subject to a fine of not to exceed Five Hundred Dollars (\$500.00)  
22 and not less than Twenty-five Dollars (\$25.00).

1 (b) Wholesalers, ~~jobbers, and/or warehousemen~~ shall make a  
2 monthly report to the Tax Commission. Such report must be received  
3 in the office of the Tax Commission not later than the fifteenth day  
4 of each month, showing purchases and invoices of all merchandise  
5 coming under this article, for the previous month; and the report  
6 shall also show the invoice number, the name and address of the  
7 consignee and consignor, the date, and such other information as may  
8 be requested by the Tax Commission. Retailers or consumers  
9 purchasing tobacco products and cigars in drop shipments shall be  
10 required to make monthly reports to the ~~Oklahoma~~ Tax Commission, as  
11 are required of ~~wholesale dealers~~ wholesalers.

12 SECTION 30. AMENDATORY 68 O.S. 2001, Section 415, is  
13 amended to read as follows:

14 Section 415. ~~All wholesalers, jobbers, retailers and consumers~~  
15 ~~who purchase unstamped cigars and tobacco products covered in this~~  
16 ~~article shall be required to purchase a tobacco license annually,~~  
17 ~~the cost of which shall be Five Dollars (\$5.00).~~

18 A. Every dealer and wholesaler of tobacco products in this  
19 state, as a condition of carrying on such business, shall annually  
20 secure from the Oklahoma Tax Commission a written license, and shall  
21 pay an annual fee of Two Hundred Fifty Dollars (\$250.00); provided,  
22 such fee shall not be applicable if paid pursuant to Section 304 of  
23 this title. Application for such license shall be made upon such

1 forms as prescribed by the Tax Commission, which shall include as a  
2 required part of the application, the applicant's agreement to the  
3 jurisdiction of the Tax Commission and the courts of this state for  
4 purposes of enforcement of the provisions of the Cigarette and  
5 Tobacco Products Tax Code. The applicant, by submitting the  
6 application, further agrees to abide by the provisions of the  
7 Cigarette and Tobacco Products Tax Code and the rules promulgated by  
8 the Tax Commission. This license, which will be for the ensuing  
9 year, must at all times be displayed in a conspicuous place so that  
10 it can be seen. Persons operating more than one place of business  
11 must secure a license for each place of business. "Place of  
12 business" shall be construed to include the place where orders are  
13 received, or where tobacco products are sold. If tobacco products  
14 are sold on or from any vehicle, the vehicle shall constitute a  
15 place of business, and the license fee of Two Hundred Fifty Dollars  
16 (\$250.00) shall be paid with respect thereto. However, if the  
17 vehicle is owned or operated by a place of business for which the  
18 regular license fee is paid, the annual fee for the license with  
19 respect to such vehicle shall be only Ten Dollars (\$10.00). The  
20 expiration for such vehicle license shall expire on the same date as  
21 the current license of the place of business.

22 B. Every retailer in this state, as a condition of carrying on  
23 such business, shall secure from the Tax Commission a license and

1 shall pay therefor a fee of Thirty Dollars (\$30.00). Application  
2 for such license shall be made upon such forms as prescribed by the  
3 Tax Commission, which shall include, as a required part of the  
4 application, the applicant's agreement to the jurisdiction of the  
5 Tax Commission and the courts of this state for purposes of  
6 enforcement of the provisions of the Cigarette and Tobacco Products  
7 Tax Code. The applicant, by submitting the application, further  
8 agrees to abide by the provisions of the Cigarette and Tobacco  
9 Products Tax Code and the rules and regulations promulgated by the  
10 Tax Commission with reference thereto. Further, the applicant  
11 agrees that it shall not purchase any tobacco products for resale  
12 from a supplier that does not hold a current wholesaler's license  
13 issued pursuant to this section, and the applicant agrees to only  
14 sell cigarettes and tobacco products to consumers. Such license,  
15 which will be for the ensuing three (3) years, must at all times be  
16 displayed in a conspicuous place so that it can be seen. Upon  
17 expiration of such license, the retailer to whom such license was  
18 issued may obtain a renewal license which shall be valid for three  
19 (3) years or until expiration of the retailer's sales tax permit,  
20 whichever is earlier, after which a renewal license shall be valid  
21 for three (3) years. The manner and prorated fee for renewals shall  
22 be prescribed by the Tax Commission. Every person operating under  
23 such license as a retailer and who owns or operates more than one

1 place of business must secure a license for each place of business.  
2 "Place of business" shall be construed to include places where  
3 orders are received or where tobacco products are sold.

4 C. Every distributing agent shall, as a condition of carrying  
5 on such business, pursuant to written application on a form  
6 prescribed by and in such detailed form as the Tax Commission may  
7 require, annually secure from the Tax Commission a license, and  
8 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).  
9 An application shall be filed and a license obtained for each place  
10 of business owned or operated by a distributing agent. The license,  
11 which will be for the ensuing year, shall be consecutively numbered,  
12 nonassignable and nontransferable, and shall authorize the storing  
13 and distribution of unstamped tobacco products within this state  
14 when such distribution is made upon interstate orders only.

15 D. 1. All wholesale, retail, and distributing agent's licenses  
16 shall be nonassignable and nontransferable from one person to  
17 another person. Such licenses may be transferred from one location  
18 to another location after an application has been filed with the Tax  
19 Commission requesting such transfer and after the approval of the  
20 Tax Commission.

21 2. Wholesale, retail, and distributing agent's licenses shall  
22 be applied for on a form prescribed by the Tax Commission. Any  
23 person operating as a wholesaler, retailer, or distributing agent

1 must at all times have an effective unexpired license which has been  
2 issued by the Tax Commission. If any such person or licensee  
3 continues to operate as such on a license issued by the Tax  
4 Commission which has expired, or operates without ever having  
5 obtained from the Tax Commission such license, such person or  
6 licensee shall, after becoming delinquent for a period in excess of  
7 fifteen (15) days, pay to the Tax Commission, in addition to the  
8 annual license fee, a penalty of twenty-five cents (\$0.25) per day  
9 on each delinquent license for each day so operated in excess of  
10 fifteen (15) days. The penalty provided for herein shall not exceed  
11 the annual license fee for such license.

12 E. No license may be granted, maintained or renewed if any of  
13 the following conditions applies to the applicant. For purposes of  
14 this section, "applicant" includes any combination of persons owning  
15 directly or indirectly, in the aggregate, more than ten percent  
16 (10%) of the ownership interests in the applicant:

17 1. The applicant owes Five Hundred Dollars (\$500.00) or more in  
18 delinquent tobacco products taxes;

19 2. The applicant had a dealer, wholesaler, or retailer license  
20 revoked by the Tax Commission within the past two (2) years; or

21 3. The applicant has been convicted of a crime relating to  
22 stolen or counterfeit tobacco products, or receiving stolen or  
23 counterfeit tobacco products.

1        F. No person or entity licensed pursuant to the provisions of  
2 this section shall purchase tobacco products from or sell tobacco  
3 products to a person or entity required to obtain a license unless  
4 such person or entity has obtained such license. Further, no person  
5 or entity licensed pursuant to the provisions of this section shall  
6 sell cigarettes or tobacco products to any tribally owned or  
7 licensed store unless it is on the list of tribally owned and  
8 licensed stores maintained and supplied by the Tax Commission.

9        G. In addition to any civil or criminal penalty provided by  
10 law, upon a finding that a licensee has violated any provision of  
11 the Cigarette and Tobacco Products Tax Codes, the Tax Commission may  
12 revoke or suspend the license or licenses of the licensee pursuant  
13 to the procedures applicable to revocation of a license set forth in  
14 Section 418 of this title.

15        SECTION 31.        AMENDATORY        68 O.S. 2001, Section 417, is  
16 amended to read as follows:

17        Section 417. A. All unstamped tobacco products upon which a  
18 tax is levied by ~~Section 401 et seq. of this title~~ the Cigarette and  
19 Tobacco Products Tax Codes and all tobacco products stamped, sold,  
20 offered for sale, or imported into this state in violation of the  
21 provisions of Section ~~4 of this act~~ 403.1 of this title, found in  
22 the possession, custody or control of any person for the purpose of  
23 being consumed, sold or transported from one place to another in

1 this state, for the purpose of evading or violating the provisions  
2 of ~~Section 401 et seq. of this title~~ the Cigarette and Tobacco  
3 Products Tax Codes, or with intent to avoid payment of the tax  
4 imposed thereunder, may be seized by any authorized agent of the  
5 Oklahoma Tax Commission or any sheriff, deputy sheriff or police  
6 within the state. Tobacco products from the time of seizure shall  
7 be forfeited to the State of Oklahoma. A proper proceeding shall be  
8 filed in the district court of the county of seizure, to maintain  
9 such seizure and prosecute the forfeiture as herein provided; the  
10 provisions of this section shall not apply, however, where the tax  
11 on such unstamped tobacco products does not exceed One Dollar  
12 (\$1.00).

13 B. All such tobacco products so seized shall first be listed  
14 and appraised by the officer making such seizure and turned over to  
15 the sheriff of the county in which the seizure is made, and a  
16 receipt taken therefor.

17 C. The person making such seizure shall immediately make and  
18 file a written report thereof to the Tax Commission, showing the  
19 name of the person making such seizure, the place where seized, the  
20 person from whom seized, the property seized and an inventory and  
21 appraisement thereof, which inventory shall be based on the usual  
22 and ordinary retail price or value of the articles seized, or the  
23 Attorney General, in the case of tobacco products stamped, sold,

1 offered for sale, or imported into this state in violation of the  
2 provisions of Section ~~4 of this act~~ 403.1 of this title. The  
3 district attorney of the county in which such seizure is made shall,  
4 at the request of the Tax Commission or Attorney General, file in  
5 the district court forfeiture proceedings in the name of the State  
6 of Oklahoma against the owner or person in possession of the  
7 property seized, if known, and if unknown, against the property  
8 seized. The clerk of the court shall issue summons to the owner or  
9 person in whose possession such property was found. Summons so  
10 issued and all procedure thereafter shall be governed by statutes  
11 relating to procedure in civil actions. If personal service cannot  
12 be had, or if suit be filed against the property seized, service may  
13 be obtained by the posting of notices in five public places within  
14 the county. The notice shall direct the owner, or if the owner be  
15 unknown, the person in possession of the property seized, to answer  
16 the petition filed within twenty (20) days from the date of the  
17 posting of such notices. The district attorney shall within three  
18 (3) days after the posting of the notices cause a copy of the same  
19 to be mailed to any defendant on whom personal service was not had,  
20 addressed to the defendant's last-known address. If, after a full  
21 hearing upon the petition, the court finds that the property seized  
22 is forfeited to the State of Oklahoma, the court shall direct to the  
23 sheriff to sell the property at public auction ten (10) days after

1 the posting of notices of sale in five public places within the  
2 county; provided, tobacco products as described in Section 4 ~~of this~~  
3 ~~act~~ 403.1 of this title shall only be sold for export outside the  
4 United States or as otherwise permitted by federal law. The  
5 proceeds of the sale shall be deposited with the clerk of the court  
6 who shall, after deducting costs including the cost of the sale, ~~pay~~  
7 ~~same to the Tax Commission as tobacco products tax collected, or in~~  
8 ~~the case of tobacco products seized as being in violation of the~~  
9 ~~provisions of Section 4 of this act, to the Attorney General. The~~  
10 ~~Attorney General shall remit the amount of tobacco products tax, if~~  
11 ~~any be due, including all penalties and interest due, to the Tax~~  
12 ~~Commission as tobacco products tax collected and shall deposit the~~  
13 ~~remainder to the revolving fund created in Section 7 of this act~~  
14 distribute cash and the proceeds of the sale of such cigarettes,  
15 vehicles and other property as follows, in the order indicated:

- 16       a. to the bona fide or innocent owner, conditional sales  
17       vendor, or mortgagee of the property, if any, up to  
18       the amount of such person's interest in the property,  
19       when the court declaring the forfeiture orders a  
20       distribution to such person,  
21       b. to the payment of the actual reasonable expenses of  
22       preserving the property, and

1           c. the balance to a revolving fund in the office of the  
2           county treasurer of the county wherein the property  
3           was seized, to be distributed as follows: one-third  
4           (1/3) to the investigating law enforcement agency;  
5           one-third (1/3) of said fund to be used and maintained  
6           as a revolving fund by the district attorney for the  
7           victim-witness fund, a reward fund or the evidence  
8           fund; and one-third (1/3) to go to the jail  
9           maintenance fund, with a yearly accounting to the  
10           board of county commissioners in whose county the fund  
11           is established. If the petitioner is not the district  
12           attorney, then the one-third (1/3) which would have  
13           been designated to that office shall be distributed to  
14           the petitioner. Monies distributed to the jail  
15           maintenance fund shall be used to pay costs for the  
16           storage of such property if such property is ordered  
17           released to a bona fide or innocent owner, lien  
18           holder, mortgagee, or vendor and if such funds are  
19           available in said fund.

20           D. The seizure and sale of such tobacco products shall not  
21           relieve the person from whom such tobacco products were seized from  
22           prosecution or the payment of penalties. The purchaser of forfeited  
23           tobacco products shall pay the regular tobacco products tax and

1 shall place proper stamps thereon before any of such tobacco  
2 products are sold or consumed.

3 E. The forfeiture provisions of ~~Section 401 et seq. of this~~  
4 ~~title~~ the Cigarette and Tobacco Products Tax Codes shall only apply  
5 to persons having possession of or transporting tobacco products  
6 with intent to barter, sell or give away the same.

7 SECTION 32. AMENDATORY 68 O.S. 2001, Section 418, is  
8 amended to read as follows:

9 Section 418. A. It shall be unlawful for any person to  
10 transport or possess unstamped tobacco products where the tax on  
11 such unstamped tobacco products exceeds the sum of One Dollar  
12 (\$1.00).

13 B. Except as otherwise provided in subsections C and D of this  
14 section, any person found guilty of violating the provisions of  
15 Section 401 et seq. of this title shall be deemed guilty of a  
16 misdemeanor, and shall upon conviction be punished by a fine of not  
17 more than Five Hundred Dollars (\$500.00) or by confinement in the  
18 county jail for not to exceed thirty (30) days, or by both such fine  
19 and imprisonment.

20 C. Any retailer violating the provisions of Section ~~4 of this~~  
21 ~~act~~ 403.1 of this title shall:

1           1. For a first offense, be punished by an administrative fine  
2 of not more than ~~One Hundred Dollars (\$100.00)~~ One Thousand Dollars  
3 (\$1,000.00);

4           2. For a second offense, punished by an administrative fine of  
5 not more than ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars  
6 (\$5,000.00); and

7           3. For a third or subsequent offense, be punished by an  
8 administrative fine of not more than ~~Five Thousand Dollars~~  
9 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00).

10          D. Any wholesaler, distributing agent or dealer violating the  
11 provisions of Section ~~4 of this act~~ 403.1 of this title shall:

12           1. For a first offense, be punished by an administrative fine  
13 of not more than Five Thousand Dollars (\$5,000.00); and

14           2. For a second or subsequent offense, be punished by an  
15 administrative fine of not more than Twenty Thousand Dollars  
16 (\$20,000.00).

17 Administrative fines collected pursuant to the provisions of this  
18 subsection shall be deposited to the revolving fund created in  
19 Section ~~7 of this act~~ 305.2 of this title.

20          E. The Oklahoma Tax Commission shall immediately revoke the  
21 license of a person punished for a violation pursuant to the  
22 provisions of paragraph 3 of subsection C of this section or a  
23 person punished for a violation pursuant to the provisions of

1 subsection D of this section. A person whose license is so revoked  
2 shall not be eligible to receive another license pursuant to the  
3 provisions of ~~Section 301 et seq. of this title~~ the Cigarette and  
4 Tobacco Products Tax Codes for a period of ten (10) years.

5 SECTION 33. AMENDATORY Section 8, Chapter 479, O.S.L.  
6 2005 (68 O.S. Supp. 2005, Section 420.1), is amended to read as  
7 follows:

8 Section 420.1 A. Each ~~distributor~~ wholesaler of tobacco  
9 products, as defined in Section 401 of Title 68 of the Oklahoma  
10 Statutes, shall maintain copies of invoices or equivalent  
11 documentation for each of its facilities for every transaction in  
12 which the ~~distributor~~ wholesaler is the seller, purchaser,  
13 consignor, consignee, or recipient of tobacco products. The  
14 invoices or documentation shall contain the ~~distributor's~~  
15 wholesaler's tobacco license number and the quantity by brand style  
16 of the tobacco products involved in the transaction.

17 B. Each retailer of tobacco products, as defined in Section 401  
18 of Title 68 of the Oklahoma Statutes, shall maintain copies of  
19 invoices or equivalent documentation for every transaction in which  
20 the retailer receives or purchases tobacco products at each of its  
21 facilities. The invoices or documentation shall show the name and  
22 address of the ~~distributor~~ wholesaler from whom, ~~or the address of~~  
23 ~~another facility of the same retailer from which,~~ the tobacco

1 products were received, the quantity of each brand style received in  
2 such transaction and the retail cigarette license number or sales  
3 tax license number.

4 SECTION 34. AMENDATORY 68 O.S. 2001, Section 421, is  
5 amended to read as follows:

6 Section 421. The sale of such tobacco products under ~~the two~~  
7 ~~preceding sections~~ Sections 419 and 420 of this title shall be  
8 restricted to sales or distribution to inmates of such veterans  
9 hospitals, or residents of such state operated domiciliary homes for  
10 veterans, as shown by the records thereof, for their own personal  
11 use and consumption. Possession of tobacco products taxed under  
12 this article, which have been purchased or received from any such  
13 veterans hospital or any such home by any person other than an  
14 inmate or resident thereof, shall be deemed a misdemeanor and  
15 punishable by a fine of Two Hundred Dollars (\$200.00) for each  
16 offense.

17 SECTION 35. AMENDATORY 68 O.S. 2001, Section 422, is  
18 amended to read as follows:

19 Section 422. All ~~manufacturers~~ dealers, wholesalers, ~~jobbers,~~  
20 retailers, or other person, selling or distributing such tobacco  
21 products under ~~the three preceding sections~~ the Cigarette and  
22 Tobacco Products Tax Codes shall comply with the provisions of such  
23 sections, and the rules and regulations of the Oklahoma Tax

1 Commission as to such sale or distribution, and failure to so comply  
2 shall constitute grounds for revocation of any license issued to  
3 said ~~manufacturer~~ dealer, wholesaler, ~~jobber~~, retailer or other  
4 person, by the Tax Commission.

5 SECTION 36. AMENDATORY 68 O.S. 2001, Section 424, is  
6 amended to read as follows:

7 Section 424. The provisions of ~~Sections 9 through 12 of this~~  
8 ~~act~~ Section 426 of this title shall not apply to a federally  
9 recognized Indian tribe or nation which has entered into a compact  
10 with the State of Oklahoma pursuant to the provisions of subsection  
11 C of Section ~~1 of this act~~ 346 of this title or to a licensee of  
12 such a tribe or nation during the period that such compact is  
13 effective.

14 SECTION 37. AMENDATORY 68 O.S. 2001, Section 425, is  
15 amended to read as follows:

16 Section 425. As used in ~~Sections 9 through 13 of this act~~ the  
17 Cigarette and Tobacco Products Tax Codes:

18 1. ~~"Tribeally owned or licensed store" means a store or place of~~  
19 ~~business which is owned and operated by a federally recognized~~  
20 ~~Indian tribe or nation, other than a federally recognized Indian~~  
21 ~~tribe or nation which has entered into a compact with the State of~~  
22 ~~Oklahoma pursuant to the provisions of subsection C of Section 1 of~~  
23 ~~this act during the period that such compact is effective, on Indian~~

1 ~~country within the territorial jurisdiction of that tribe or nation~~  
2 ~~or which is duly licensed by such tribe or nation pursuant to tribal~~  
3 ~~laws or ordinances to conduct business located on Indian country~~  
4 ~~within the territorial jurisdiction of that tribe or nation;~~

5 2. ~~"Federally recognized Indian tribe or nation" means an~~  
6 ~~Indian tribal entity which is recognized by the United States Bureau~~  
7 ~~of Indian Affairs as having a special relationship with the United~~  
8 ~~States;~~

9 3. ~~"Indian country" means:~~

10 a. ~~land held in trust by the United States of America for~~  
11 ~~the benefit of a federally recognized Indian tribe or~~  
12 ~~nation,~~

13 b. ~~all land within the limits of any Indian reservation~~  
14 ~~under the jurisdiction of the United States~~  
15 ~~Government, notwithstanding the issuance of any~~  
16 ~~patent, and including rights-of-way running through~~  
17 ~~the reservation,~~

18 c. ~~all dependent Indian communities within the borders of~~  
19 ~~the United States whether within the original or~~  
20 ~~subsequently acquired territory thereof, and whether~~  
21 ~~within or without the limits of a state, and~~

22 d. ~~all Indian allotments, the Indian titles to which have~~  
23 ~~not been extinguished, including individual allotments~~

1                   ~~held in trust by the United States or allotments owned~~  
2                   ~~in fee by individual Indians subject to federal law~~  
3                   ~~restrictions regarding disposition of said allotments~~  
4                   ~~and including rights-of-way running through the same;~~

5           4. ~~"Member of the tribe" or "tribal member" means a person who~~  
6 ~~is duly enrolled within the membership of the federally recognized~~  
7 ~~Indian tribe or nation which owns or licenses the store;~~

8           5. ~~"Nonmember of the tribe or nation" or "nontribal member"~~  
9 ~~means, with respect to a particular Indian tribe or nation, any~~  
10 ~~person who is not a duly enrolled member of that tribe or nation,~~  
11 ~~and shall include any person who is a member of another Indian tribe~~  
12 ~~or nation but not a member of that tribe or nation;~~

13           ~~6.~~ "Untaxed tobacco products" means packages of tobacco  
14 products upon which taxes required by state law have not been paid  
15 and includes tobacco products upon which the incorrect rate of tax  
16 applicable to the retail establishment at which the tobacco product  
17 is sold has been paid, regardless of the identity of the  
18 establishment which the tobacco product has been sold, shipped,  
19 consigned or delivered;

20           ~~7.~~ 2. "Contraband tobacco products" means untaxed tobacco  
21 products for which taxes are required to be paid pursuant to the  
22 provisions of ~~Sections 9 through 12 of this act or Section 401 et~~  
23 ~~seq. of Title 68 of the Oklahoma Statutes~~ the Cigarette and Tobacco

1 Products Tax Codes and which are in the possession, custody or  
2 control of any person, for the purpose of being consumed, sold,  
3 offered for sale or consumption or transported to any person in this  
4 state other than a wholesaler licensed under Section 415 of Title 68  
5 of the Oklahoma Statutes; provided, contraband tobacco products  
6 shall not include untaxed tobacco products sold to veterans'  
7 hospitals, to state-operated domiciliary homes for veterans or to  
8 the United States for sale or distribution by said entities in  
9 accordance with Sections 419 through 421 of Title 68 of the Oklahoma  
10 Statutes; and

11 ~~8.~~ 3. "Taxed tobacco products" means packages of tobacco  
12 products upon which taxes required by law have been paid;

13 ~~9.~~ "Commission" means the Oklahoma Tax Commission; and

14 ~~10.~~ "Person" shall include any individual, company,  
15 partnership, joint venture, joint agreement, association (mutual or  
16 otherwise), corporation, trust, estate, business trust receiver or  
17 trustee appointed by any state or federal court, syndicates or any  
18 combination acting as a unit, in the plural or singular number.

19 SECTION 38. AMENDATORY 68 O.S. 2001, Section 427, is  
20 amended to read as follows:

21 Section 427. Every wholesaler, ~~jobber or warehouseman~~ doing  
22 business within this state and required to secure a license as  
23 provided in Section 415 of ~~Title 68 of the Oklahoma Statutes~~ this

1 title may sell tobacco products to tribally owned or licensed stores  
2 in this state; provided, wholesalers shall only sell cigarettes or  
3 tobacco products to tribally owned or licensed stores that are on  
4 the list of tribally owned and licensed stores maintained and  
5 supplied by the Oklahoma Tax Commission. It shall be the duty of  
6 the wholesaler, ~~jobber or warehouseman~~ to collect, report and remit  
7 the tax imposed by Section ~~10 of this act~~ 426 of this title on the  
8 tobacco products inventory sold to a tribally owned or licensed  
9 store.

10 SECTION 39. AMENDATORY 68 O.S. 2001, Section 427.1, is  
11 amended to read as follows:

12 Section 427.1 If a wholesaler, ~~jobber or warehouseman~~ timely  
13 accepts documentation as prescribed by the Oklahoma Tax Commission  
14 from a person claiming that the tobacco products will be sold at a  
15 tribally owned or licensed store, the wholesaler, ~~jobber or~~  
16 ~~warehouseman~~ shall be relieved of any liability for any additional  
17 tax due or required to be collected should it later be determined  
18 that the tobacco products were not purchased for sale at a tribally  
19 owned or licensed store.

20 SECTION 40. AMENDATORY 68 O.S. 2001, Section 427.2, is  
21 amended to read as follows:

22 Section 427.2 Any person determined to have violated the  
23 provisions of ~~Section 13 or 14 of this act~~ shall the Cigarette and

1 Tobacco Products Tax Code may have ~~their~~ the person's license  
2 suspended for a period of up to six (6) months ~~and a~~ or cancelled.  
3 A subsequent violation by ~~said~~ any person whose license has  
4 previously been suspended shall be grounds to permanently cancel the  
5 license.

6 SECTION 41. AMENDATORY 68 O.S. 2001, Section 428, is  
7 amended to read as follows:

8 Section 428. A. All untaxed tobacco products sold or shipped  
9 to tribally owned or licensed stores in this state by wholesalers,  
10 ~~jobbers or warehousemen~~ not licensed by this state pursuant to the  
11 provisions of Section 415 of Title 68 of the Oklahoma Statutes for  
12 the purpose of selling or consuming untaxed tobacco products in this  
13 state in violation of ~~this act~~ the Cigarette and Tobacco Products  
14 Tax Codes shall be subject to seizure of the shipments and  
15 forfeiture of the inventory pursuant to the provisions of Section  
16 417 of ~~Title 68 of the Oklahoma Statutes~~ this title.

17 B. Any peace officer of this state, including, but not limited  
18 to, officers of the Department of Public Safety or the Oklahoma  
19 State Bureau of Investigation, any sheriff, any salaried deputy  
20 sheriff or any municipal police officer is authorized to stop any  
21 vehicle upon any road or highway of this state in order to inspect  
22 the bill of lading or to take such action as may be necessary to  
23 determine if untaxed tobacco products are being sold or shipped in

1 violation of the provisions of this section. Such officers shall  
2 also have the duty to cooperate with the Oklahoma Tax Commission to  
3 enforce the provisions of this act.

4 SECTION 42. REPEALER 68 O.S. 2001, Sections 317.2,  
5 317.3, 317.4, 317.5, 317.6, 317.7 and 317.8, are hereby repealed.

6 SECTION 43. This act shall become effective November 1, 2006.

7 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,  
8 As Amended and Coauthored.